

Vol  
1882

United States  
Circuit Court of Appeals

For the Ninth Circuit.

METROPOLITAN LIFE INSURANCE  
COMPANY, a Corporation,

Appellant.

vs.

AMOS HALCOMB, as Administrator of the Estate  
of George R. Halcomb, also known as George  
Raymond Halcomb, deceased,

Appellee.

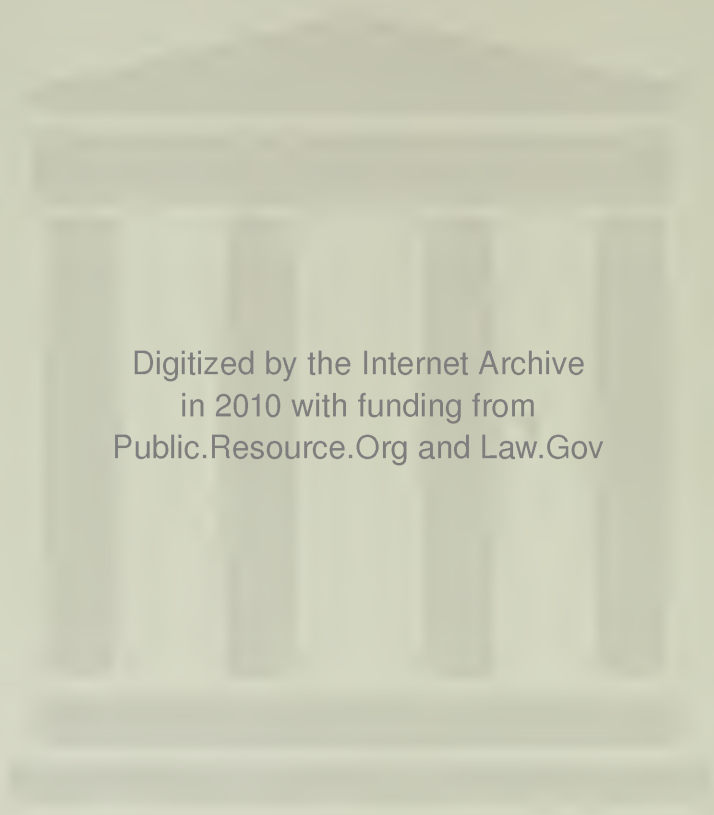
Transcript of Record

Upon Appeal from the District Court of the United  
States for the Northern District of California,  
Northern Division

FILED

AUG 30 1934

PAUL P. O'BRIEN,



Digitized by the Internet Archive  
in 2010 with funding from  
Public.Resource.Org and Law.Gov

United States  
Circuit Court of Appeals

For the Ninth Circuit.

---

METROPOLITAN LIFE INSURANCE  
COMPANY, a Corporation,

Appellant.

vs.

AMOS HALCOMB, as Administrator of the Estate  
of George R. Halcomb, also known as George  
Raymond Halcomb, deceased,

Appellee.

---

Transcript of Record

---

Upon Appeal from the District Court of the United  
States for the Northern District of California,  
Northern Division



# INDEX

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Amended Answer .....	57
Assignment of Errors.....	81
Bill of Exceptions.....	95
Defendant's Exhibit No. 3—Pilot's License	111
Defendant's Exhibit No. 4—Loan Certificate and Assignment of Policy.....	111
Defendant's Proposed Instructions.....	115
Instructions of the Court.....	125
Plaintiff's Exhibit No. 1—Ticket.....	97
Plaintiff's Exhibit No. 2—Policy of Life Insurance .....	109
Plaintiff's Instructions .....	122
Witnesses for Defendant:	
Dobbins, C. H.	
—direct .....	111
—cross .....	112
Witnesses for Plaintiff:	
Halcomb, Daniel Franklin	
—direct .....	104

Index	Page
Witnesses for Plaintiff (cont.):	
Halecomb, Frances	
—direct .....	108
Rose, Ethel J.	
—direct .....	96
—cross .....	102
Bond on Appeal.....	92
Certificate of Clerk U. S. District Court to Transcript on Appeal .....	138
Citation on Appeal.....	139
Complaint .....	1
Judgment .....	68
Memorandum Opinion .....	64
Minutes of Court—April 16, 1934—Denying Motion for New Trial.....	79
Motion for New Trial.....	70
Notice of Filing Record on Removal.....	56
Order Allowing Appeal.....	91
Petition for Appeal.....	79
Praecipe for Transcript on Appeal.....	136
Record on Removal.....	1
Complaint .....	1
Summons .....	45

Index	Page
Petition for Removal.....	47
Bond on Removal.....	50
Notice of Filing Petition for Removal.....	52
Order Granting Removal.....	54
Order for Removal.....	54
Clerk's Certificate to Judgment Roll.....	55
Special Verdict .....	64
Stipulation for Transmittal of Exhibits.....	135
Summons .....	45





In the Superior Court of the State of California in  
and for the County of Shasta.

AMOS HALCOMB, as Administrator of the Estate  
of George R. Halcomb, also known as George  
Raymond Halcomb, Deceased,  
Plaintiff,

vs.

METROPOLITAN LIFE INSURANCE COM-  
PANY, a Corporation,  
Defendant.

### COMPLAINT.

Plaintiff complains of defendant and for cause  
of action alleges:

#### I.

That during all the times and dates herein men-  
tioned, the above named defendant has been and  
now is a corporation duly organized, existing and  
entitled to transact business in the State of Cali-  
fornia, and is transacting business in said State  
of California.

#### II.

That George R. Halcomb, also known as George  
Raymond Halcomb, died in the county of Shasta,  
State of California, on or about the 7th day of July,  
1932, and left an estate in said County of Shasta.  
That after proceedings were duly had and taken  
in the Superior Court of the State of California,  
in and for the county of Shasta, Amos Halcomb  
was appointed Administrator of the estate of George  
R. Halcomb, also known as George Raymond Hal-

comb, and thereafter duly qualified as such Administrator.

### III.

That during all the times and dates herein mentioned the above named plaintiff, Amos Halcomb, has been and now is the duly appointed, qualified and acting administrator of the estate of George R. Halcomb, also known as George Raymond Halcomb, deceased.

### IV.

That on or about the 13th day of April, 1928, at and in the city of Redding, county of Shasta, State of California, and for a valuable consideration the above named defendant executed [1\*] and delivered to George R. Halcomb, also known as George Raymond Halcomb, its policy of insurance in writing, a copy of which said policy is hereunto attached, marked "Exhibit A", and by this reference made a part hereof, and by said policy insured the life of the said George R. Halcomb, also known as George Raymond Halcomb to the amount and in the sum of \$2000. Said policy provided, and said defendant agreed that in the event that said George R. Halcomb also known as George Raymond Halcomb, should meet his death as the result directly and independently of all other causes, by bodily injuries sustained through external, violent, and accidental means, provided:

(1) That such death shall have occurred while said policy and the Supplementary Contract were

---

\*Page numbering appearing at the foot of page of original certified Transcript of Record.

in full force and prior to the anniversary date of said policy nearest to the 65th birthday of the insured, and

(2) That all premiums under said policy and the Supplementary Contract shall have been duly paid, and

(3) That said policy shall not be in force by virtue of any non-forfeiture provisions thereof.

In which event and in accordance with the terms of "Exhibit A", said defendant agreed to pay to the person or persons entitled thereto by virtue of the terms of said policy double the amount of said \$2,000. or \$4,000.

V.

That Sadie Mae Halcomb, wife of George R. Halcomb, also known as George Raymond Halcomb, is the beneficiary named in said policy, to whom the benefits thereof are due, owing and unpaid.

VI.

That said beneficiary, Sadie Mae Halcomb predeceased George R. Halcomb, also known as George Raymond Halcomb, and by reason thereof the benefits of said policy under and pursuant to the terms thereof are payable to plaintiff herein as administrator of the estate of George R. Halcomb, also known as George Raymond Halcomb. That George R. Halcomb, also known as George [2] Raymond Halcomb died on or about the 7th day of July, 1932 as a result of an aeroplane accident. He, the said George R. Halcomb, also known as George Raymond Halcomb, together with his wife, being

fare paying passengers in said plane, at the time of the accident, injuries and death.

#### VII.

That subsequent to the death of George R. Halcomb, also known as George Raymond Halcomb, and in accordance with the terms of said policy plaintiff duly notified said defendant and made proof of death in accordance with the terms and conditions of said policy of insurance, and said plaintiff has duly performed all of the terms and conditions of said policy on his part to be performed and said policy was in full force and effect at the time of the injury and death of the said George R. Halcomb, also known as George Raymond Halcomb.

#### VIII.

That said defendant has failed, neglected and refused, and still fails, neglects and refuses to pay said plaintiff the sum of \$4000. as provided in said policy, or any part thereof, and there is now due, owing and unpaid from defendant to plaintiff the sum of \$4,000. lawful money of the United States, together with interest thereon.

Wherefore, plaintiff prays judgment against said defendant for the sum of \$4,000. and interest, together with costs of suit incurred herein, together with such other and further relief as to the court may seem just and equitable in the premises.

AMOS HALCOMB

Administrator of the Estate of George R. Halcomb,  
also known as George Raymond Halcomb.

L. C. SMITH

Attorney for plaintiff.

[3]

State of California

County of Shasta.—ss.

Amos Halcomb, as Administrator of the estate of George R. Halcomb, also known as George Raymond Halcomb, deceased, being first duly sworn deposes and says: That he is the plaintiff in the above entitled action, and has read the above and foregoing complaint, and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes the same to be true.

AMOS HALCOMB

Subscribed and sworn to before me this 10th day of September, 1932.

L. C. SMITH

Notary Public in and for the County of Shasta,  
State of California. [4]

---

EXHIBIT "A"

The Light That Never Fails.

METROPOLITAN LIFE INSURANCE  
COMPANY

A Mutual Life

Incorporated By

Insurance Company

The State of New York.

HEREBY INSURES THE LIFE OF  
GEORGE R HALCOMB

herein called the Insured, in accordance with the terms of this Policy No. 1253695 A and promises to

pay at its Home Office in the City of New York Two Thousand Dollars to Ida J. Halcomb, Mother of the Insured, Beneficiary, upon receipt of due proof of the death of the Insured and upon the surrender of this Policy. The right on the part of the Insured to change the Beneficiary, in the manner hereinafter provided, is —reserved.

This Policy is issued in consideration of the Application therefor, copy of which application is attached hereto and made a part hereof, and of the payment for said insurance on the life of the above named Insured, of Thirteen Dollars and two cents (which maintains this Policy in force for a period of 3 months from its date of issue, as set forth below) and of the payment hereafter of a like  $\frac{1}{4}$  annual premium on each 13th day of April, July, October and January (hereinafter called the due date), until Twenty full years Premiums shall have been paid or until the prior death of the Insured.

The Provisions and Benefits printed or written by the Company on the following pages are a part of this Policy as fully as if recited over the signatures hereto affixed.

In Witness Whereof, the Metropolitan Life Insurance Company has caused this Policy to be executed this 13th day of April, 1928, which is the date of issue of this Policy.

JAS. S. ROBERTS  
Secretary

HARRY FISKE  
President

S. Sharpe  
Policy Registrar  
LIMITED PAYMENT LIFE.

Age 21

Premiums payable for 20 years or until prior death.

Insurance payable at death only.

Annual distribution of Divisible Surplus.

\*Form 808 -A Ord.

PROVISIONS AND BENEFITS.

1. Payment of Premiums:—All premiums are payable, on or before their due dates, at the Home Office of the Company, or to an authorized Agent of the Company, but only in exchange for the Company's official premium receipt signed by the President, Vice-President, Actuary, Treasurer or Secretary of the Company and countersigned by the Agent, or other authorized representative of the Company receiving the premium.

The payment of a premium shall not maintain this Policy in force beyond the due date when the next premium is payable, except as hereinafter provided.

If the premium shall have been paid for the period during which the death of the Insured occurs, then, if such period be greater than one month, the Company will pay, in addition to the amount otherwise payable under this Policy, that portion of such premium applicable to the policy month or months subsequent to the policy month when death occurred. A grace period of thirty-one days, without interest charge, will be granted for the payment

of every premium after the first, during which grace period the insurance shall continue in force, but if the Insured dies during such period the portion of the unpaid premium for insurance of the current policy month shall be considered as an indebtedness to the Company for which this policy is security.

On written request of the Insured, approved by the Company [6] at its Home Office, premium payments may be changed, at any anniversary of the date of issue of this Policy, so as to be payable annually, semi-annually, or quarterly in accordance with the published rates in force at the date of issue of this Policy.

2. Age:—If the age of the Insured has been misstated, the amount payable hereunder shall be such as the premium paid would have purchased at the correct age.

3. Incontestability:—This Policy shall be incontestable after it has been in force for a period of two years from its date of issue, except for non-payment of premiums, and except as to provisions and conditions relating to benefits in the event of total and permanent disability, and those granting additional insurance specifically against death by accident, contained in any supplementary contract attached to and made part of, this Policy.

4. Entire Contract:—This Policy and the application therefor constitute the entire contract between the parties, and all statements made by the Insured, shall, in the absence of fraud, be deemed



representations and not warranties, and no statement shall avoid this Policy or be used in defense of a claim hereunder unless it be contained in the application therefor and a copy of such application is attached to this Policy when issued.

5. Suicide:—If the Insured within one year from the date of the issue hereof die by his own hand or act, whether sane or insane, the liability of the Company hereunder shall be limited to an amount equal to the premiums which have been received, without interest.

6. Change of Beneficiary:—When the right to change the beneficiary is reserved, and if there be no written assignment of this Policy on file with the Company, the Insured may (while this Policy is in force) designate a new beneficiary, with or without reserving the right of change thereafter, by filing [7] written notice thereof at the Home Office of the Company accompanied by this Policy for suitable endorsement. Such change shall take effect upon endorsement of the same on this Policy by the Company. If any beneficiary shall die before the Insured, the interest of such beneficiary shall vest in the Insured, unless otherwise provided herein.

7. Assignment:—No assignment of this Policy shall be binding upon the Company unless it be executed upon blanks furnished by the Company and filed with the Company at his Home Office in the City of New York. The Company assumes no obligation as to the validity and sufficiency of any assignment.

8. Agents:—No Agent is authorized to waive forfeitures, to alter or amend this Policy, to accept premiums in arrears or to extend the due date of any premium.

9. Options on Surrender or Lapse:—After premiums for two full years shall have been paid on this Policy, the Owner hereof or the Assignee of record; if any, upon written request filed with the Company at its Home Office, together with the presentation of this Policy for legal surrender or endorsement within three months after the due date of any premium in default, shall be entitled to one of the following options:

(a) Cash Surrender Value—

To receive the Cash Surrender Value which shall be the Reserve on this Policy (omitting fractions of a dollar per thousand of insurance) and on any outstanding Paid-up Additions at due date of premium in default, less a surrender charge during the second and third policy years of not more than two and one-half per cent of the amount of insurance under this Policy. The Company shall deduct from such Cash Surrender Value any indebtedness to the Company for which this Policy is security, the remainder being hereinafter referred to as the “net sum”, or, [8]

(b) Paid-Up Whole Life Insurance—

To have the Insurance continued in force from the due date of premium in default for a reduced amount of non-participating Paid-Up Whole Life Insurance, payable at the same time and under

the same conditions as this Policy. Such Paid-Up Whole Life Insurance shall be for such an amount as the net sum described under (a) above will purchase (in even dollars) at the then attained age of the Insured when applied as a net single premium. Such Paid-up Whole Life Insurance may be surrendered at any time for its then Cash Surrender Value (viz., its full Reserve at the date of such surrender less any indebtedness to the Company on such Paid-up Whole Life Insurance) or,  
(c) Paid-up Term Insurance—

To have the Insurance continued in force from the due date of premium in default as non-participating Paid-up Term Insurance. If there be no indebtedness to the Company for which this Policy is security, the amount of such Paid-up Term Insurance shall be equal to the amount of insurance under this Policy, plus any outstanding Paid-up Additions, and for a term (in years and whole number of months) such as the Cash Surrender Value as defined under (a) above will purchase at the then attained age of the Insured when applied as a net single premium. If there be any such indebtedness the amount of the Paid-up Term Insurance will be reduced in such proportion as the indebtedness bears to the Cash Surrender Value as defined under (a) above. Such Paid-up Term Insurance may be surrendered at any time for its then Cash Surrender Value (viz., its full Reserve value at the date of surrender).

In the event of default in the payment of any premium, after premiums for two full years shall

have been paid on this Policy, if the Owner or the Assignee of record, if any, shall not avail himself of one of the foregoing options, in the manner hereinbefore provided, within three months after the due date [9] of the premium in default, this Policy will be continued by the Company for a reduced amount of non-participating Paid-up Whole Life Insurance, as provided under Option (b) above.

The Company, at its discretion, may defer the payment of any Cash Surrender Value under Options (a) (b) or (c) as above for a period not exceeding ninety days after the application therefor is received by the Company.

The Reserve held for this Policy and for any Paid-up Additions and the Net Single Premiums mentioned above, shall be computed upon the American Experience Table of Mortality with interest at three and one-half per centum per annum.

10. Reinstatement:—If this Policy shall lapse in consequence of default in payment of any premium, it may be reinstated at any time, unless the Cash Surrender Value has been paid or the non-participating Paid-up Term Insurance period has expired, upon the production of evidence of insurability satisfactory to the Company and the payment of all overdue premiums with interest at six per centum per annum to the date of reinstatement. Any loan which existed at date of default, together with interest at the same rate to the date of reinstatement, may be either repaid in cash, or

if not in excess of the cash value at date of reinstatement, continued as an indebtedness for which this Policy shall be security.

808-A Ord. -4-26

TABLE OF GUARANTEED LOAN VALUES  
AND SURRENDER OPTIONS

Computed in accordance with Paragraph 9 for a Policy free from indebtedness and without paid-up additions.

End of Year	Cash Value or Loan Value	Paid-Up Non-Participating Whole Life Insurance	Paid-Up Non-Participating Term Insurance Continued for	
			Years	Months
2	\$ 23	\$ 77	3	1
3	39	130	5	6
				[10]
4	\$ 60	\$193	8	8
5	76	242	11	5
6	93	292	14	4
7	111	341	17	6
8	129	391	20	8
9	149	441	23	8
10	169	491	26	4
11	189	542	28	8
12	211	592	30	8
13	234	643	32	5
14	257	693	34	0
15	281	744	35	6
16	307	795	37	0
17	333	846	38	7
18	360	897	40	6

End of Year	Cash Value or Loan Value	Paid-Up Non-Participating Whole Life Insurance	Paid-Up Non-Participating Term Insurance Continued for Years	Months
19	389	949	43	2
20	419	Policy	Life	
25	466	Paid-up		
30	520	Participating		

For each \$1,000 For each \$1,000 Face amount of policy  
of the amount of the amount continued for period  
of insurance. of insurance. specified.

If the amount of the insurance is in excess of \$1,000, the Loan, Cash and Paid up Values, as shown in the table, will be proportionate. Ord. 20 Pay Life Age 21

The values shown in the above table are for complete policy years, with surrender charge, if any, deducted. Values for later years will be computed upon the same basis and furnished on request.

Should default in payment of any premium occur at any other time than at the anniversary date of the Policy, the values for the end of the preceding policy year shall be increased in an amount or for a period equal to one-twelfth of the increase in value for the then current policy year, according to the above table, for each twelfth of such year for which premiums shall have been paid. [11]

The Cash Surrender Value at any time other than at the end of the period for which premiums have been paid shall be the Cash Surrender Value at the end of such period less interest from the date of payment to the end of such period at the rate of six per cent per annum.

The Loan Values provided for in the above table for the end of a policy year can be obtained at any time during such policy year in the manner and according to the following clause entitled "Loans".

11. Loans:—At any time after premiums for two full years shall have been paid and while this policy is in force, except when continued as nonparticipating Paid-up Term Insurance, the Company, on proper and lawful assignment of this Policy and presentation of it for endorsement will loan to the Owner or the Assignee of record, if any, on the sole security thereof, an amount not greater than the Cash Surrender Value at the end of the current policy year. Any indebtedness to the Company on this Policy, at the date of said loan, together with interest in advance on said loan to the end of the current policy year and any unpaid premium or premiums for the current policy year, will be deducted from the amount of said loan. Said loan will bear interest at the rate of six per centum per annum payable annually on each anniversary of this Policy. If interest be not paid when due, it shall be added to the principal, until the entire outstanding indebtedness shall equal the Cash Sur-

render Value, in which event this Policy shall become null and void, after one month's notice shall have been mailed by the Company to the last known address of the Insured and of the Assignee of record, if any. After the expiration of the premium payment period, or when this Policy is continued for a reduced amount of non-participating Paid-up Whole Life Insurance, payment of interest on any loan each year, in advance, to the end of the current policy year, will be required. At the option of the Company, the granting of a loan may be deferred for a period [12] not exceeding ninety days after application therefor is received by the Company, unless such loan is to be applied solely to the payment of premiums due to the Company. At any time while this Policy is in force the whole or any part of such indebtedness may be repaid. At the death of the Insured any such indebtedness to the Company shall be deducted from the amount payable hereunder.

12. Participation in Divisible Surplus:—This Policy is a participating contract while in force as a premium-paying policy, or as a policy fully paid up by completion of the payment of the full number of premiums specified herein, and the Company will annually, as of the thirty-first day of December of each year, ascertain and apportion any divisible surplus accruing hereon. (See "Notice to Policy-holder" below.) Such divisible surplus will be payable on the next anniversary of this Policy following the next succeeding thirtieth day of April,



and may, at the option of the Insured, or of the Assignee, of record, if any, be either (a) paid in cash, or, (b) applied within the grace period towards the payment of any premium or premiums; or (c) applied to the purchase of a participating paid-up addition to the sum insured; or, (d) left to accumulate to the credit of this Policy at such rate of interest as the Company may declare on such funds, but not less than  $3\frac{1}{2}$  per centum per annum, and payable at maturity of this Policy or withdrawable in cash on any anniversary date of this Policy. If no other option is selected by the Insured, or by the Assignee of record, if any, within three months after the date when such divisible surplus is payable, then the divisible surplus will be applied to the purchase of a Paid-up addition to the sum insured. Such paid-up addition may be surrendered at any time for a cash value at least equal to the amount of the surplus originally applied to its purchase. [13]

**NOTICE TO POLICY-HOLDER.**—The divisible surplus accruing under policies of this class will probably not be sufficient to enable the Company to make any apportionment under this Policy before the end of the third year.

13. **Optional Modes of Settlement:**—Upon written election made to and accepted by the Company, in accordance with the provisions hereinafter contained, the whole or any part of the amount payable according to the terms of this Policy, will, upon receipt of due proof of the death of the Insured,

be retained by the Company and paid out according to one of the following OPTIONS:

Option 1. (Interest Payments.) By the payment of Interest, either annually, semi-annually or monthly, at the rate of three and one-half per centum per annum on said amount so to be retained by the Company, the first Interest payment being payable at the end of one year, six months, or one month respectively according to the mode of interest payment elected, and by the payment upon the death of the payee, or at the end of a certain number of years, as specified in said written election, of the amount so to be retained by the Company, together with any accrued Interest, to such payee, or to the person designated in said election; or, if there be no person so designated, to the executors or administrators of such payee.

Option 2. (Installment Payment.) By the payment of equal annual or semi-annual instalments during a number of years certain in accordance with the Table below for each one thousand dollars of the amount so to be retained by the Company, the first Installment being payable immediately.

[14]

#### OPTION 2—INSTALMENT PAYMENTS

Number Years Specified	Amount of each Annual Instalment	—or—	Amount of each Semi-annual Instalment	Number Years Specified	Amount of each Annual Instalment
1	\$1,000.00		\$504.34	16	\$79.88
2	508.60		256.54	17	76.38
3	344.86		173.98	18	73.26
4	263.04		132.72	19	70.48

Number Years Specified	Amount of each Annual Instalment	—or—	Amount of each Semi-annual Instalment	Number Years Specified	Amount of each Annual Instalment
5	\$214.00		\$107.98	20	\$67.98
6	181.32		91.52	21	65.74
7	158.02		79.76	22	63.70
8	140.56		70.96	23	61.86
9	127.00		64.12	24	60.16
10	116.18		58.66	25	58.62
11	107.34		54.22	26	57.20
12	99.98		50.50	27	55.90
13	93.78		47.38	28	54.68
14	88.48		44.70	29	53.56
15	83.90		42.40	30	52.54

OR

Amount of Each  
Semi-annual Instalment

\$40.38

38.60

37.02

35.62

34.38

33.24

32.22

31.28

30.44

29.66

28.94

28.28

27.68

27.12

26.60

OPTION 3. (Life Income)—By the payment of equal annual Instalments for a fixed period of either ten or twenty years, and for so many years longer as the payee shall survive, in accordance with the Table below for each one thousand dollars of the amount to be so retained by the Company, the first Instalment being payable immediately.

[15]

## OPTION 3—LIFE INCOME.

Age of Payee When Policy Becomes Payable	AMOUNT OF EACH INSTALLMENT Fixed Period of 20 years	Fixed Period of 10 years	Age of Payee When Policy Becomes Payable
10 and	\$43.24	\$44.46	33
11 under	43.40	44.64	34
12	43.58	44.82	35
13	43.76	45.02	36
14	43.94	45.22	37
15	44.14	45.44	38
16	44.34	45.66	39
17	44.54	45.90	40
18	44.78	46.14	41
19	45.00	46.40	42
20	45.24	46.68	43
21	45.50	46.96	44
22	45.76	47.26	45
23	46.04	47.56	46
24	46.32	47.90	47
25	46.64	48.24	48
26	46.94	48.60	49
27	47.28	48.96	50

Age of Payee When Policy Becomes Payable	AMOUNT OF EACH INSTALMENT Fixed Period of 20 years	Fixed Period of 10 years	Age of Payee When Policy Becomes Payable
28	\$47.02	\$49.36	51
29	47.98	49.78	52
30	48.36	50.22	53
31	48.76	50.68	54
32	49.16	51.16	55

AMOUNT OF EACH INSTALMENT		Age of Payee When Policy Becomes Payable	AMOUNT OF EACH INSTALMENT	
Fixed Period of 20 Years	Fixed Period of 10 years		Fixed Period of 20 years	Fixed Period of 10 years
\$49.60	\$51.68	56	\$63.44	\$75.18
50.04	52.22	57	64.00	76.88
50.52	52.78	58	64.54	78.66
51.00	53.38	59	65.04	80.50
51.50	54.02	60	65.50	82.38
52.02	54.68	61	65.92	84.30
52.58	55.38	62	66.30	86.28
53.14	56.14	63	66.64	88.28
53.72	56.92	64	66.94	90.30
54.32	57.74	65	67.20	92.32
54.92	58.62	66	67.40	94.34
55.56	59.54	67	67.50	96.36
56.20	60.52	68	and over	98.34
56.86	61.56	69	Same as 67	100.28
57.54	62.64	70		102.18
58.20	63.78	71		104.00
58.88	64.98	72		105.74
59.56	66.24	73		107.38
60.24	67.56	74		108.92

AMOUNT OF EACH INSTALMENT		Age of Payee When Policy Becomes Payable	AMOUNT OF EACH INSTALMENT	
Fixed Period of 20 Years	Fixed Period of 10 years		Fixed Period of 20 years	Fixed Period of 10 years
60.92	68.96	75		110.32
61.58	70.42	76		111.60
62.22	71.94	77		112.74
62.84	73.52			and over same as 77

[16]

Any Instalments payable under Option 2, or any instalments for the fixed period of ten or twenty years, as the case may be, under Option 3, which shall not have been paid prior to the death of the payee, shall, unless otherwise directed in said written election, be computed at three and one-half per centum per annum, compound interest, and paid in one sum to the executors or administrators of the payee.

In lieu of semi-annual Instalments under Option 2, quarterly or monthly payments thereof, and in lieu of annual instalments under Option 3, semi-annual, quarterly or monthly payments thereof, in each case for proportionate parts, may be elected.

The amounts payable under the foregoing Options are based upon an assumed interest earning of three and one-half per centum per annum, but if in any year the Company shall declare for that year, upon funds held by it under such Options, a greater interest rate than three and one-half per cent., the amount payable on the next anniversary of such payments under Options 1 or 2, or under Option 3, within the fixed period of ten or twenty

years as the case may be, shall be increased accordingly.

When so directed in the said written election, but not otherwise, the supplementary contract hereinafter provided for, on legal release thereof, may be surrendered for the amount so retained by the Company, with any accrued interest under Option 1, or for the commuted value of any stipulated Instalments yet to be paid under Option 2, or for the commuted value of any unpaid Instalments for the fixed period of ten or twenty years, as the case may be, then remaining unpaid under Option 3., such commutation under Option 3 shall, however, in nowise operate as to payments conditional upon the payee surviving the term during which the instalments certain would have been payable. Such commuted value under either Option 2 or 3 shall be the amount calculated by the Company on the basis of compound interest at the rate of three and one-half per centum per annum. A payee [17] who has not, by virtue of the terms of said written election, the right to surrender the supplementary contract may not assign or encumber such contract or any payment thereunder.

Election of any of the foregoing Options must be made in writing, addressed to the Company at its Home Office, and may be made (a) prior to the death of the Insured, by the Insured and the Beneficiary jointly, or, if the right to change the beneficiary has been reserved, then by the Insured alone; or, (b) if there be no such election on file

with the Company at the time of the death of the Insured, then such election may be made by the beneficiary. In no event, however, will any of the foregoing modes of settlement be available if the Policy is assigned and any assignment will nullify any prior election.

No election shall be effective which shall purport to require any Interest or Instalment payment to be made by the Company in a sum less than \$10.

Optional settlements may not be elected under a Policy which is payable to a corporation, co-partnership or association.

In case one of the foregoing optional modes of settlement is selected, this Policy must be surrendered, whereupon a supplementary contract will be issued by the Company for the Option elected.

808AOrd. -4-26

COPY OF APPLICATION ATTACHED  
HERE TO.

NOTICE TO POLICY-HOLDER  
PLEASE READ YOUR POLICY PROMPTLY  
UPON ITS RECEIPT.

Do not fail to notify the Company at its Home Office when you change your address.

When writing District Office or the Home Office give your Policy Number and state clearly Name, Residence, County and State.

The Company Agents have no authority to waive forfeitures, to [18] alter or amend this Policy, to accept premiums in arrears or to extend the due date of any premium.



Checks, drafts, or Money Orders in payment of premiums should be drawn to the order of Metropolitan Life Insurance Company.

Privilege of voting for Directors. The election of Directors of the Company is to be held in New York on the second Tuesday in April, 1927, and every second year thereafter. The holder of this Policy, after one year from its date, while it remains in force, will have a right to vote either in person or by proxy or by mail. For particulars as to how to vote, apply to the Secretary, No. 1 Madison Avenue, New York City.

In the Event of the death of the Insured, the Claimant should promptly advise the Home Office, in New York, or the District Office through which premiums payments have been made.

Pay nothing to any representative of the Company for preparation of claim papers. Deliver the Policy only to the Company's representative. The Company is glad to pay and there is no necessity for help or alleged influence in collecting. It is not necessary to employ an attorney or any other person to collect the insurance under this Policy, or to secure any of the benefits it provides.

Premium Payments are invalid unless made in exchange for an official Home Office receipt signed by the President, Vice-President, Actuary, Treasurer of the Company and properly countersigned.

District    Chico    Number 1253695    A

The Light That Never Fails

Metropolitan Life Insurance Company, 1 Madison Avenue, New York, a Mutual Life Insurance

Company. Incorporated by the State of New York, N. Y. Limited Payment Life Policy Insuring the Life of George R. Halcomb in the amount of \$2000 for  $\frac{1}{4}$  Annual Premium of \$13.02 payable for 20 years from APR 13 1928 the date of issue, or until prior death. Annual Distribution of Divisible Surplus. Premiums for Supplementary [19] Contract, Disability \$1.38  $\frac{1}{4}$  ANN.

Accidental Death Provision \$ .80  $\frac{1}{4}$  ANN.

Receipt of \$15.20, the first premium hereunder, is hereby acknowledged.

Countersigned

May 16, 1928 JAS. S. ROBERTS, Secretary.

Signature EMANUEL J. YAGER Agt.

This Policy shall not take effect unless or until the first premium therefor, as entered on the foregoing receipt, has actually been paid in cash.

808-AOrd. -4-26

Printed in U. S. A.

This Policy has been assigned to the Metropolitan Life Insurance Company as the sole security for a Loan, the unpaid amount of which and of the interest thereon is a lien against the policy. Possession of the policy, as evidence of such security, has been waived by the Company. Nov. 27, 1931.

In compliance with the written request of the insured it is hereby declared that the amount due at the death of the said Insured shall be payable to Mae S. Halcomb Wife of the Insured, if living, otherwise to the Estate of the Insured, with right of revocation.

4/24/31

W. C. ALTCHER

DT Secretary

## ACCIDENTAL DEATH BENEFIT.

Benefit payable in the event of death from accident as herein limited and provided.

Supplementary Contract attached to and made part of Life Insurance Policy No. 1253695 issued on the life of George [20] R Halcomb Metropolitan Life Insurance Company in consideration of the application for this Contract, as contained in the application for said Policy, the latter being the basis for the issuance hereof, and in consideration of — dollars and Eighty cents, payable  $\frac{1}{4}$  Annual as an additional premium herefor, such payment being simultaneous with, and under the same conditions, as, the regular premium under the said policy except as hereinafter provided.

Hereby agrees to pay to the Beneficiary or Beneficiaries of record under said policy, in addition to the amount payable according to the terms of said policy, the sum of Two Thousand dollars, upon receipt, at the Home Office of the Company in the City of New York, of due proof of the death of the insured, as the result, directly and independently of all other causes, of bodily injuries sustained through external, violent and accidental means, provided (1) that such death shall have occurred while said policy and this Supplementary Contract are in full force, and prior to the anniversary date of said policy nearest to the sixty-fifth birthday of the insured; and (2) that all premiums under said policy and this Supplementary Contract shall have been duly paid; and (3) that said policy shall not then be in force by virtue of any non-forfeiture provisions thereof; and (4) that death shall have en-

sued within ninety days from the date of such injuries; and (5) that death shall not have been the result of self-destruction, whether sane or insane, or caused by or contributed to, directly or indirectly, or wholly, or partially, by disease or by bodily or mental infirmity; and (6) that death shall not have resulted from bodily injuries sustained while participating in aviation or aeronautics except as a fare paying passenger, nor while the insured is in the Military or Naval Service in time of war, nor as the result of violation of law by the insured. [21]

If premiums continue to be payable under the terms of said policy after the anniversary of said policy nearest to the sixty-fifth birthday of the insured, this Supplementary Contract shall, nevertheless, terminate and be of no further force or effect and the additional premium on account hereof shall cease to be payable, both on the anniversary of said policy nearest to the sixty-fifth birthday of the insured.

The Company shall have the right and opportunity to examine the body of the insured, and to make an autopsy in case of claim hereunder, unless forbidden by law.

If said policy or any Supplementary Contract attached and made a part thereof, contains a provision for the waiver of premiums in the event of the total and permanent disability of the insured, further premiums under this Supplementary Contract shall be waived if and when premiums under said policy are waived as a result of such disability.

The insurance under this Supplementary Con-

tract shall be suspended while the insured is in the Military or Naval Service in time of war, in which event that portion of the additional premium unearned during the period of such suspense shall be refunded.

This Supplementary Contract may be canceled by the insured on the due date of any premium or instalment thereof, by written request to the Company, together with the return of the policy, and this Supplementary Contract to the Company, and the endorsement of such cancellation hereon.

This Supplementary Contract shall automatically terminate and be of no further force or effect if any premium on said policy or on this Supplementary Contract shall remain unpaid at the end of the period of grace allowed under said policy for payment of premium thereunder or if said policy be surrendered or converted under one of its non-forfeiture provisions or otherwise terminated. [22]

Whenever this Supplementary Contract shall be canceled or otherwise terminated, the additional premium shall no longer be payable.

This Supplementary Contract shall be deemed to be a part of the above numbered policy and the provision of said policy concerning declarations and representations by the insured, restrictions, payment of premiums, change of beneficiary, and assignment, are hereby referred to and by such reference made a part hereof. No other provision of said policy shall be held or deemed to be a part hereof, except

(a) The provision of the said policy as to incontestability shall apply hereto, but shall not pre-

clude the Company from requiring as a condition to recovery hereunder, due proof that death occurred through accidental means, within the terms of this Supplementary Contract.

(b) The provision of said policy as to reinstatement shall apply hereto, except that this Supplemental Contract shall not be reinstated unless said policy is in force and no premium is in default thereon, or unless said policy is reinstated at the time of reinstatement of this Supplementary Contract.

(c) The provisions of said policy as to payment in instalments or as to Optional Settlements shall be so applied that if and when the proceeds of said policy shall be so payable in instalments, whether under an election duly made by the Insured or the beneficiary, or otherwise, then any amount payable under this Supplementary Contract shall be payable in like manner and in the same instalments per one thousand dollars of insurance or commuted value as the instalments under said policy.

No change in, addition to, waiver or permit under this Supplementary Contract shall be valid unless endorsed hereon and signed by an executive officer of the Company. [23]

In Witness Whereof, the Metropolitan Life Insurance Company has caused this Supplementary Contract to be executed this 13th day of April 1928.

JAS. S. ROBERT

HARRY FISKE

Secretary

President

Form B689 Ord

Nov. 1922

5-2.18.28-15c

## Total and Permanent Disability.

WAIVER OF PREMIUMS AND PAYMENT  
OF MONTHLY INCOME.

Supplementary Contract attached to and made part of Life Insurance Policy No. 1253695 issued on the life of George R Halcomb Metropolitan Life Insurance Company in consideration of the application for this Contract, as contained in the application for said Policy, the latter being the basis for the issuance hereof, and in consideration of One Dollars and Thirty-eight cents payable  $\frac{1}{4}$  Annual as an additional premium herefor, such payment being simultaneous with, and under the same conditions as, the regular premium under the said Policy, except as hereinafter provided,

Hereby Agrees, that upon receipt by the Company at its Home Office in the City of New York of due proof, on forms which will be furnished by the Company, on request, that the insured has, while said Policy and this Supplementary Contract are in full force and prior to the anniversary date of said Policy nearest to the sixtieth birthday of the insured, become totally and permanently disabled, as the result of bodily injury or disease occurring and originating after the issuance of said Policy, so as to be prevented thereby from engaging in any occupation and performing any [24] work for compensation or profit, and that such disability has already continued uninterruptedly for a period of at least three months, it will, during the continuance of such disability,

1. Waive the payment of each premium falling due under said Policy and this Supplementary Contract, and

2. Pay to the Insured, or a person designated by him for the purpose, or if such disability is due to, is accompanied by, mental incapacity, to the beneficiary of record under said Policy, a monthly income of \$10 for each \$1,000 of insurance, or of commuted value of installments, if any, under said Policy.

Such waiver shall begin as of the anniversary of said Policy next succeeding the date of the commencement of such disability, and such payments shall begin as of the date of the commencement of such disability, provided, however, that in no case shall such waiver begin as of any such anniversary occurring, nor shall such payments begin as of a date, more than six months prior to the date of receipt of the required proof.

The disability benefit herein provided shall not be payable if, at the date of disability, the said Policy shall be in force by virtue of any non-forfeiture provisions thereof, or if disability shall have resulted from bodily injuries sustained by the insured while participating in aviation or aeronautics, except as a farepaying passenger, or sustained while the Insured is in the Military or Naval Service in time of war, or as the result of violation of law by the insured.

Notwithstanding that proof of disability may have been accepted by the Company as satisfactory,



the insured shall at any time, on demand from the Company, furnish due proof of the continuance of such disability, but after such disability shall have continued for two full years the Company will not demand such proof more often than once in each subsequent year. If the insured shall fail to furnish such proof, or if the insured shall be able [25] to perform any work or engage in any business whatsoever for compensation or profit, the monthly income herein provided shall immediately cease, and all premiums thereafter falling due shall be payable according to the terms of said Policy and of this Supplementary Contract.

The waiver of premiums and monthly income payments herein provided shall be in addition to all other benefits under said Policy, provided, however, that, if there be indebtedness to the Company under said Policy, the interest on such indebtedness shall, if not otherwise paid, be deducted from said monthly income payments. Monthly income payments shall not be subject commutation.

If premiums continue to be payable under the terms of said Policy after the anniversary of said Policy nearest to the sixtieth birthday of the insured, this Supplementary Contract shall, nevertheless, terminate and be of no further force or effect and the additional premium on account hereof shall cease to be payable both on the anniversary of said Policy nearest to the sixtieth birthday of the insured.

The insurance under this Supplementary Contract shall be suspended while the Insured is in the Military or Naval Service in time of war, in which event that portion of the additional premium unearned during the period of such suspense shall be refunded.

This Supplementary Contract may be canceled by the insured on the due date of any premium or installment thereof, by written request to the Company, together with the return of said Policy and this Supplementary Contract, to the Company, and the endorsement of such cancellation hereon.

This Supplementary Contract shall automatically terminate and be of no further force or effect, if any premium on said Policy, or on this Supplementary Contract, shall remain unpaid at the end of the period of grace allowed under said Policy for [26] payment of premium thereunder or if said Policy be surrendered or converted under one of its non-forfeiture provisions or otherwise terminated.

Whenever this Supplementary Contract shall be canceled or otherwise terminated, the additional premium shall no longer be payable.

This Supplementary Contract shall be deemed to be a part of the above numbered Policy and the provisions of said Policy concerning declarations and representations by the insured, restrictions, payment of premiums, change of beneficiary, and assignment, are hereby referred to and by such reference made a part hereof. No other provisions of

said Policy shall be held or deemed to be a part hereof, except

(a) The provision of the said Policy as to incontestability shall apply hereto, but shall not preclude the Company from requiring, as a condition to recovery hereunder, due proof of such total and permanent disability as entitled him to the benefits hereof.

(b) The provision of said Policy as to reinstatement shall apply hereto, except that this Supplementary Contract shall not be reinstated unless said Policy is in force and no premium is in default thereon, or unless said Policy is reinstated at the time of reinstatement of this Supplementary Contract.

No change in, addition to, waiver or permit, under this Supplementary Contract shall be valid unless endorsed hereon and signed by an executive officer of the Company.

In Witness Whereof, the Metropolitan Life Insurance Company has caused this Supplementary Contract to be executed this 13th day of April 1928

JAS. S. ROBERT

HARRY FISKE

Secretary

President

Form B 688 Ord.

Nov. 1922

6-11.1.27-Im

[27]

Apr 13 28

## Part A

Use Black Ink for Answers and Signatures

Application to the Metropolitan Life Insurance Company (Incorporated by the State of New York)  
This form to be used for ages 16 and over for ordinary or intermediate applications not over \$2000.

1. Full name of person whose life is to be insured. (Print) GEORGE RAYMOND HALCOMB

2. Residence. If in country state R. F. D. Route.

Apr. No. ....

Floor. ....

No. 3 Street (Print) FIRST Front or rear

City or Town (print) REDDING

County SHASTA State CAL

How long have you resided at this address?

WHOLE LIFE

If less than one year give previous address

To what address shall communications be sent?

Residence

3. Place of birth Town or City State

REDDING

CAL

4. Date of birth Age nearest birthday

Month SEPT. Day 6 Year 1907 21 years.

(Be sure age and date of birth are in accord)

5. Single, married, Widower, or widow? Divorced or Separated? SINGLE

6. Occupation. If more than one, state all. Nature of employer's business. CLERK

7. Exact duties of Occupation.

CHECKING IN BANK

8. Any change in occupation contemplated? If so, give particulars NO

9. Place of business (City, Street and No.) By whom employed.

MARKET STREET NORTHERN CAL.

REDDING, CAL. NAT. BANK.

10. Former occupation (within last ten years) SCHOOL AND SAME AS 6 [28]

11. Do you within the next twelve months, contemplate journeying outside the United States or Canada, or making an ocean trip? If yes, state when, where to, for what purpose and for how long?

NO

12. Have you any intention of making aerial flights within the next two years? If yes, give particulars.

NO

13. Have you any other application or negotiation for life, accident or health insurance now pending or contemplated? If yes, give particulars.

NO

Form 036N.M-1

Ordinary Dept. Pd. Sept. 1926

1253695 Printed in U. S. A.

14. Amount of Insurance desired \$2000 Ordinary Prem. Payable \$ Intermediate Annually, Semi-An., Quarterly Monthly

15. Plan of Insurance as  
designated in Rate Book  
20 P. L. With Disability 8 P. L.
16. (a) Beneficiary in case of your death (print)  
IDA JOSEPHINE HALCOMB  
Relationship of proposed beneficiary MOTHER  
Occupation Housewife  
P. O. Address 3 FIRST ST. REDDING, Cal.  
Do you reserve the right to change the bene-  
ficiary at any time without the consent of  
Beneficiary herein designated?  
YES  
Answer Yes or No
17. Is any one entirely dependent upon you for  
Support? If yes give particulars.  
NO
18. Are you insured in this or any other Company?  
If Yes, give particulars.  
Name of Company  
Amount  
Kind of Policy Your Insured  
If in Metropolitan give Policy No. [29]  
What amount of the above insurance carries,  
(a) Disability Provision? \$ NONE  
(b) Accidental Death benefit (Double indem-  
nity)
19. If now applying for disability provision, state  
amount of weekly benefit carried under Health  
Policies issued by this or any other Company  
\$ NONE

20. Is the Policy for which you are hereby applying intended to take the place of insurance carrier with this or any other Company? If Yes, give particulars.

NO

21. What amount have you paid in advance on account of the first premium? \$5.00

22. Corrections and Amendments. (For Home Office use)

23. Have you ever applied to any Company or Association without receiving Insurance in the Amount or on the plan applied for, or at your actual age, or at the normal premium therefor?

If Yes, give particulars. NO

Company or Association Year If not issued as applied for in what respect different? Declined or postponed. If not advised, so state.

To be completed in the case of a woman applicant, if ever married.

24. What are (in full) the sources of your income?

25. Number of children living, age and occupation of each.

26. Husband's name Age

(a) Business

(b) In what companies and for what amount

Is he insured in your favor?

- (c) If not insured in your favor, state why not.
- (d) Is application on his life being submitted?

It is understood and agreed: 1. That the foregoing statements and answers are correct and wholly true, and, together with the answers to questions on Part B hereof, they shall form the basis of the contract of Insurance, if one be issued.

- 2. That no agent, medical examiner or any other person, except the officers of the Company, have power on behalf of the Company:
  - (a) To make, modify or discharge any contract of Insurance,
  - (b) To bind the Company by making any promises respecting any benefits under any policy issued hereunder.
- 3. That no statement made to or by, and no knowledge on the part of, any agent, medical examiner or any other persons as to any facts pertaining to the Applicant shall be considered as having been made or brought to the knowledge of the Company [30] unless stated in either part A or B of this Application.
- 4. That the Company shall incur no liability under this application until it has been received, approved and a policy issued and delivered and a full first premium stipulated in the policy has actually been paid to and accepted by the Company during the lifetime of the applicant, in which case such Policy shall be deemed to have



taken effect as of the date of issue as recited on the first page thereof.

5. In case of apparent errors or omissions discovered by the Company in Part A of this Application, the Company is hereby authorized to amend this Application by noting the change in the space entitled "Corrections and Amendments", and I hereby agree that my acceptance of such Policy, accompanied by a copy of the application so amended, shall operate as a ratification of such changes or amendments, provided, however, that no change shall be made as to amount, classification, plan of insurance or benefits unless agreed to in writing by me.

Signed by Applicant and dated at Redding this 11 day of April, 1928.

Witness to Signature E. YAGER Agt.

Signature of Applicant GEORGE RAYMOND HALCOMB

## CONTINUATION OF THE APPLICATION.

### Part B

Use Black Ink for Answers and Signature

The spaces below are for the Applicant's Answers only. Nothing but his Answer should be inserted. Every Question in Part B must be fully answered by the Applicant in the presence of the Agent, or the Medical Examiner, if medical examination is required.

*you* within the last twelve months to *any Insurance* Company for Insurance without *medical tion*? If Yes, give names of Companies

and amount of *e* issued. If declined, or postponed, so state.

NO

[31]

2. What is your height? 5 ft 9½ in.
3. (a) What is your weight? 137 pounds.  
(b) Date when last weighed 6 days ago
4. Change in weight in last two years.  
(a) Decrease No  
Increase No  
(b) If not stationary, give cause and particulars.
5. What are your measurements (under vest?)  
Chest 31½ inches  
Waist 31 inches
6. Present condition of health? Good
7. (a) When last sick? May, 1926  
(b) Nature of sickness. Operated for appendicitis  
(c) How long sick? Two weeks.
8. Have you ever changed your residence or left your work for more than one month on account of your health? No  
If Yes, give date, duration and name of ailment.
9. Any mental or physical defect or infirmity?  
If yes, give particulars. No.
10. Any impairment of sight or hearing? If yes, give particulars. No.
11. Have you had any surgical operation, serious illness or accident? If yes, give date, duration and name of ailment. Yes, See No. 7 b
12. Are you ruptured? If yes, give particulars, and state whether you wear a truss. No.

13. Have you ever been told that there was sugar, albumin or casts in your urine? No
14. Have you ever taken Insulin treatment? If yes, state dates and for how long. No.
15. Have you ever been told that you had any heart trouble? No.
16. Name and address of your usual medical attendant? Dr. C. A. Muller, Redding, Cal.
17. Have you ever had any of the following complaints or diseases? Apoplexy, appendicitis, Asthma, Bronchitis, Cancer or other Tumor, Consumption, Diabetes, Disease of Heart, Disease of Kidneys, Disease of Liver, Disease of Lungs, Fistula, Fits or Convulsions, Goitre, Habitual cough, Insanity, Colic, Jaundice, Paralysis, Pleurisy, Pneumonia, Rheumatism, Scrofula, Syphilis, Spinal Diseases, Spitting of Blood, Varicose Veins. If yes, give particulars, dates and duration See No. 7 b [32]
18. Have you been attended by a physician during the last five years? If yes, give name of complaints, dates, how long sick, and names of physicians.  
Operated for appendicitis. Sherman T. White
19. Have you had any treatment within the last five years at any dispensary, hospital or sanatorium? If yes, give date, duration, name of ailment and name of institution.  
Yes. See No. 7 b and No. 18.
20. How much time have you lost from work through illness during the last five years?  
2 weeks

21. Have you ever used opium, chloral, cocaine, or other narcotics? No.
22. (a) To what extent do you use beer, wine or other alcoholic beverages? None  
 (b) Have you ever used any of them to excess? If yes, when, and for how long? No
23. Are you now, or have you ever been, engaged in the manufacture or sale of malt or alcoholic liquors? No
24. Have you during the past year resided or been intimately associated with any person suffering from consumption? If yes, give particulars. No.
25. Has any one of your parents, brothers or sisters now, or ever had, tuberculosis, cancer, diabetes, epilepsy, insanity, or any hereditary disease? If yes, give particulars. No

26.	Living		Dead		Cause of Death
	Family Record	Age	Health	Age at Death	
	Father	53	good		
	Mother	50	good		
	Brothers	14	good		
		12	good		
	No. living	5	9		
	No. Dead	1	5	good	1 day
	Sisters	21	good		
		17	good		
	No. living	4	7		dont know
	No. dead	1	3	1 year	know

I hereby certify that I have read the Answers to the questions [33] in Part A hereof, and to the

questions in Part B hereof, before signing and that they have been correctly written, as given by me, and that they are full, true and complete, and that there are no exceptions to any such answers other than as stated herein.

Dated at Redding this 12 day of April, 1928

Witness to signature J. E. TAYLOR

Signature of Applicant

GEORGE RAYMOND HALCOMB

[Endorsed]: Filed Sept 12 1932 Errol A. Yank, Clerk, By L. Elizabeth Bass, Deputy Clerk. [34]

---

[Title of Court and Cause.]

THE PEOPLE OF THE STATE OF CALIFORNIA send greeting to METROPOLITAN LIFE INSURANCE COMPANY, a Corporation, Defendant

You are hereby required to appear in an action brought against you by the above-named Plaintiff, in the Superior Court of the County of Shasta, State of California, and to answer the Complaint filed therein, within ten days, (exclusive of the day of service) after the service on you of this Summons, if served within said County; if served elsewhere, within thirty days.

And you are hereby notified that if you fail to appear and answer, the Plaintiff will take judgment for any money or damages demanded in the Complaint as arising upon contract, or will apply to the Court for any other relief demanded in the complaint.

Witness my hand and the seal of said Superior Court of the County of Shasta, State of California, this 12th day of September, A. D., 1932.

ERROL A. YANK

Clerk,

[Superior Court  
Seal]

By RUTH A. PRESLEIGH

Deputy Clerk.

[35]

---

State of California

County of San Francisco.—ss.

Harold Friedenbergr, being first duly sworn, says: That at all of the times herein mentioned, he was over the age of eighteen years, and not a party to the within action. That on the 14th day of September 1932 in the County of San Francisco, he served the within Summons upon the Defendant Metropolitan Life Insurance Co., a Corporation by then and there delivering to E. G. Galt, Asst. Secretary for Metropolitan Life Insurance Co., personally a copy of said Summons attached to a copy of the Complaint in said action. That on the 14th day of September, 1932, he served said Summons upon the Defendant Metropolitan Life Insurance Co., in the County of San Francisco by then and there delivering to E. G. Galt who is Asst. Secretary for Metropolitan Life Insurance Company, the said Defendant, a copy of said Summons, attached to a copy of the Complaint in said action.

[Seal]

HAROLD FRIEDENBERG

Subscribed and sworn to before me this 14th day of Sept. 1932.

ORAH M. NICHOLS

My Commission expires April 4th, 1935.

[Endorsed]: Filed Sept. 20, 1932. Errol A. Yank, Clerk, by Ruth A. Presleigh, Deputy Clerk. [36]

---

[Title of Court and Cause.]

PETITION FOR REMOVAL.

The petition of the Metropolitan Life Insurance Company, a corporation, defendant herein, respectfully shows:

I.

That the amount and matter in dispute in the above-entitled action exceed the sum of \$3,000.00, exclusive of interest and costs, towit, the sum of \$4,000.00.

II.

The controversy in said action is, and at the time of the commencement thereof was, between citizens and residents of different states, to-wit, between a citizen and resident of the State of California, and a citizen and resident of the State of New York, as follows: That plaintiff is a citizen and resident of the State of California, and of the Northern Division, in the Northern District thereof; that defendant, Metropolitan Life Insurance Company, is now, and at all times herein mentioned was, a corporation organized and existing under

and by virtue of the laws of the State of New York, and a citizen of said State.

### III.

Petitioner herewith offers a bond with good and sufficient surety, to-wit, Glens Falls Indemnity Company, in the sum of \$500.00, for entry in the office of the Clerk for the Northern Division, Northern District of California, within thirty days, of a certified copy of the record in the above-entitled action, and for the payment of any costs that may be awarded by said court if said court shall hold that said suit was wrongfully or improperly removed thereto. [37]

### IV.

The time within which defendant is required to plead or answer to the complaint herein, under and by virtue of the laws of the State of California, and the rules of this court, has not expired.

WHEREFORE, petitioner prays that this Honorable Court proceed no further herein, except to make the order for removal required by law, and to accept the said surety and bond, and cause the record herein to be removed unto the District Court of the United States, for the Northern District of California, Northern Division.

METROPOLITAN LIFE INSURANCE  
COMPANY, a corporation,

By L. J. SCHMOLL

Assistant Secretary

KNIGHT, BOLAND & RIORDAN,

Attorneys for Petitioner.

[38]



State of California

City and County of San Francisco.—ss.

L. J. Schmoll, being first duly sworn, deposes and says:

That he is an officer of the Metropolitan Life Insurance Company, a corporation, to-wit, an Assistant Secretary of the defendant corporation in the within action, and that he makes this verification for and on behalf of said corporation.

That he has read the foregoing petition for removal and knows the contents thereof; that the same is true of his own knowledge, except as to those matters stated therein on information or belief, and as to such matters that he believes it to be true.

[Seal]

L. J. SCHMOLL

Subscribed and sworn to before me this 19th day of September, 1932.

MARION CURTIS

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Sept. 29, 1932. Errol A. Yank, Clerk. [39]

GLENS FALLS INDEMNITY COMPANY of  
Glens Falls, New York

[Title of Court and Cause.]

BOND ON REMOVAL FROM SAID COURT.

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, Glens Falls Indemnity Company, a corporation organized and existing under and by virtue of the laws of the State of New York for the purpose of making, guaranteeing or becoming surety upon bonds or undertakings required or authorized by law, and having complied with all the requirements of the laws of the State of California regulating the admission of such a corporation to transact business in said State, is held and firmly bound unto the plaintiff in the above entitled action as administrator, and to his successors, heirs, representatives and assigns, in the sum of Five Hundred and no/100 Dollars (\$500.00), lawful money of the United States of America, for the payment of which, well and truly to be made, it binds itself, its successors and assigns, firmly by these presents.

The condition of this obligation is such that, whereas, the defendant, Metropolitan Life Insurance Company, a Corporation, has applied, by petition to the Superior Court of the State of California, in and for the County of Shasta, for the removal of a certain cause therein pending, wherein Amos Halcomb, administrator of the estate of George R. Halcomb, deceased, is plaintiff, and the

said Metropolitan Life Insurance Company is defendant, to the Federal Court, Northern District of California, Northern Division, for further proceedings, on the grounds in said petition set forth, and that all proceedings in said action in said Superior Court be stayed; [40]

Now, therefore, if your petitioner, the said Metropolitan Life Insurance Company shall enter in said Federal Court, Northern District of California, Northern Division, within thirty days from the date of the filing of said petition in said Superior Court, a certified copy of the record in said suit and shall pay all costs which may be awarded by said Federal Court if said Federal Court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void, otherwise it shall remain in full force and effect.

In Witness Whereof, the undersigned corporation has caused these presents to be executed by its Attorney and its corporate seal to be hereto affixed, this 20th day of September, 1932.

GLENS FALLS INDEMNITY COMPANY,

By R. LYNN COLOMB

Attorney.

State of California,  
City and County of San Francisco.—ss.

On this 20th day of September, in the year One Thousand Nine Hundred and thirty-two before me, Con T. Shea, a Notary Public, in and for the said City and County of San Francisco, personally ap-

peared R. Lynn Colomb known to me to be the Attorney of the Glens Falls Indemnity Company, the Corporation described in and that executed the within instrument, and also known to be to be the person who executed it on behalf of the Corporation therein named, and he acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and [41] affixed my Official Seal, at my office in the City and County of San Francisco, State of California, the day and year in this Certificate first above written.

[Seal]

CON T. SHEA

Notary Public in and for the City and County of  
San Francisco, State of California.

Approved, Oct. 3, 1932

WALTER E. HERZINGER,

Judge.

[Endorsed]: Filed Sept. 30, 1932. Errol A. Yank, Clerk, By Ruth A. Presleigh, Deputy. [42]

---

[Title of Court and Cause.]

NOTICE OF FILING PETITION FOR REMOVAL WITH COPY OF PETITION AND BOND ATTACHED.

To the Plaintiff above-named and to L. C. Smith, Esq., his attorney:

You are hereby notified that the defendant herein, Metropolitan Life Insurance Company, a corporation, has prepared and intends to file herein its

petition and bond for the removal of the above-entitled cause from the above-entitled court and into the District Court of the United States, for the Northern District of California, northern Division; that copies of said petition and bond are attached hereto and made a part hereof; that said petitioner will, on Friday, the 30th day of September, 1932, at the hour of ten o'clock in the forenoon of said day, or as soon thereafter as counsel may be heard, present said petition and bond to the above-entitled court, located at the Court-house of the above-entitled court in the City of Redding, County of Shasta, State of California, and will then and there apply to said court for an order removing said cause as in said petition prayed.

Dated September 20th, 1932.

KNIGHT, BOLAND &  
RIORDAN

Attorneys for Defendant, Metropolitan  
Life Insurance Company, a corpora-  
tion.

[Endorsed]: Filed Sept. 29, 1932. Errol A. Yank,  
Clerk. [43]

---

[Title of Court and Cause.]

Receipt of copies of the within Petition for Re-  
moval, Bond upon Removal, and Notice of Time  
and Place for Presentation of Petition for Re-

removal in the above entitled case is hereby admitted this 24th day of September, 1932.

L. C. SMITH

Attorney for Plaintiff.

[Endorsed]: Filed Sept. 29, 1932. Errol A. Yank, Clerk. [44]

---

[Title of Court and Cause.]

October 3, 1932.

Present: Hon. Walter E. Herzinger, Judge.

PETITION FOR REMOVAL TO FEDERAL COURT IS GRANTED.

I, Errol A. Yank, Clerk of the Superior Court, in and for the County of Shasta, do hereby certify that the foregoing is a full, true and correct copy of an order made in the above entitled action and entered on the minutes of said Superior Court, on the 3rd day of October, 1932.

Attest, My hand and seal of said Superior Court this 3rd day of October, 1932.

ERROL A. YANK,

Clerk.

Order for Removal signed and filed October 3, 1932. [45]

---

[Title of Court and Cause.]

ORDER FOR REMOVAL.

Defendant above named, Metropolitan Life Insurance Company, a corporation, having filed herein its petition for removal in the above entitled cause

to the Northern Division of the United States District Court for the Northern District of California, and having filed therewith a good and sufficient bond conditioned as required by law, and having given due notice of the time and place for the presentation of said petition and bond; now, therefore,

It is hereby ordered that the above entitled cause be transferred to the Northern Division of the United States District Court for the Northern District of California for further proceedings.

And it is further ordered that the bond and undertaking on removal tendered herewith be and the same is hereby approved.

Dated: October 3rd, 1932.

WALTER E. HERZINGER

Judge of the Superior Court of the State  
of California, in and for the County  
of Shasta.

[Endorsed]: Filed Oct. 11, 1932. Errol A. Yank,  
Clerk, By Ruth A. Presleigh, Deputy Clerk. [46]

---

I, Errol A. Yank, County Clerk of the County of Shasta, and ex-officio Clerk of the Superior Court thereof, do hereby certify the foregoing to be a full and correct copy of the Complaint, summons, petition for removal; bond on removal from said Court; Notice of filing petition for removal with copy of petition and bond attached; receipt of copies, etc.; copy of minute order granting removal

and order for removal, in the matter of Amos Halcomb, as Administrator of the Estate of George R. Halcomb, also known as George Raymond Halcomb, Deceased, plaintiff, vs. Metropolitan Life Insurance Company, a corporation, defendant, now on file and of record in my office.

Witness my hand and seal of said Court, this 11th day of October, 1932.

[Seal] ERROL A. YANK, Clerk.

[Endorsed]: Filed Oct. 14, 1932. Walter B. Maling, Clerk. [47]

[Title of Court and Cause.]

**NOTICE OF FILING RECORD ON REMOVAL.**

To plaintiff above named and to L. C. Smith, Esq., his attorney:

YOU AND EACH OF YOU are hereby notified that defendant on the 14th day of October, 1932, filed a certified transcript of the record in the above entitled case with the Clerk of the United States District Court for the Northern District of California, Northern Division: that said record when filed in said court was numbered 1038 S.

Dated: October 15, 1932.

KNIGHT, BOLAND &  
RIORDAN

Attorneys for Defendant.

[Endorsed]: Filed Oct. 18, 1932. Walter B. Maling, Clerk. [48]



[Title of Court and Cause.]

AMENDED ANSWER.

Comes now the defendant and files this its amended answer to the complaint of plaintiff on file herein, and admits, denies and alleges as follows:

I.

Admits the allegations of section "I".

II.

Admits the allegations of section "II".

III.

Admits the allegations of section "III".

IV.

Denies all the allegations of section "IV" except as herein specially alleged. Alleges that on or about the 13th day of April, 1928, in consideration of a written application therefor and the payment of \$13.02, and the payment of a like sum on the 13th day of July, October, January and April in each year until twenty full years' premiums shall have been paid, defendant issued to George R. Halcomb its policy of insurance upon his life, wherein and whereby defendant promised to pay to Ida J. Halcomb, mother of the insured, the sum of \$2,000.00, upon receipt of due proof of the death of said George R. Halcomb. In further consideration of said application, and the payment of eighty cents on the 13th day of July, October, January and April in each year, defendant agreed to pay to said

Ida J. Halcomb the further sum of \$2,000.00 upon receipt at the home office of defendant of due proof of the death of said George R. Halcomb as the result, directly and independently of all other causes, of bodily injuries sustained through external, violent and accidental means, provided that such death shall not have resulted from bodily injuries sustained while participating in aviation or [49] aeronautics except as a fare-paying passenger. That thereafter, and under the terms of said policy, Sadie Mae Halcomb, wife of George R. Halcomb, was substituted as beneficiary thereof. That a copy of said policy is attached to and made a part of the complaint herein.

#### V.

Admits the allegations of section "V".

#### VI.

According to the information and belief of defendant, defendant denies that Sadie Mae Halcomb predeceased George R. Halcomb, and upon like information and belief alleges that George R. Halcomb and Sadie Mae Halcomb perished in a common disaster, to-wit, in an airplane accident. Denies that at the time of their deaths, respectively, either George R. Halcomb or Sadie Mae Halcomb were, either of them, fare-paying passengers in said or any airplane, and in this connection alleges, upon information and belief, that they met their deaths, respectively, as aforesaid while participating in aviation or aeronautics, to-wit, by airplane accident, neither being a fare-paying passenger.

## VII.

Admits that the policy was in full force and effect, as hereinbefore alleged, at the time of the death of George R. Halcomb, but denies that plaintiff made proof of death in accordance with the terms and/or conditions of said policy in this, that he did not furnish proof of death that George R. Halcomb died as the result, directly and independently of all other causes, of bodily injuries sustained through external, violent and accidental means while participating in aviation or aeronautics as a fare-paying passenger.

## VIII.

Admits that defendant has failed and neglected and refused, and now fails and neglects and refuses, to pay plaintiff [50] the sum of \$4000.00, and the defendant denies the rest and remainder of the allegations set forth in Paragraph VIII of said complaint, and each thereof, and in this regard avers that upon the date of the death of the said insured there was due payable to the plaintiff from the defendant, under the terms and provisions of said policy only, the sum of \$2,000.00, together with accrued dividends on said policy in the sum of \$8.29, less, however, the sum of \$78.00, with interest in the sum of \$1.09, or the total sum of \$79.09, which said sum was and now is the principal and interest due, owing and unpaid by the insured to the defendant pursuant to the said policy of insurance and to the terms of a certain Loan Certificate and Assignment of said policy, dated No-

vember 28, 1930, a copy of which is hereto attached, marked Exhibit "A", and made a part hereof to the same extent as though the same was fully set forth herein. That there is now due, owing and payable to plaintiff from defendant under and pursuant to the terms and provisions of said policy of insurance the sum of \$1,929.20, and no more. That on or about the 6th day of September, 1932, defendant offered to pay and tendered to plaintiff the said sum of \$1,929.20 in full payment of its entire obligation and liability under said policy, and that plaintiff refused to accept said offer or tender, and that defendant now offers to pay the plaintiff the said sum of \$1,929.20, and no more.

Wherefore, defendant prays that plaintiff have judgment for \$1,929.20, and no more, and that otherwise it be hence dismissed with its costs.

Dated, September 29th, 1933.

DEVLIN & DEVLIN  
& DIEPENBROCK  
Attorneys for Defendant. [51]

EXHIBIT "A".

Full Loan Value

FOR HOME OFFICE USE

Policy Number—1253695 a

Date of Loan—Nov. 28, 1930

Amount of Loan—\$78.00

LOAN CERTIFICATE

and Assignment of Policy

Policy No.—1253695 a

Insured—George R. Halcomb

The Undersigned George R. Halcomb hereby assign(s), transfer(s) and set(s) over unto the Metropolitan Life Insurance Company all right, title and interest in its policy above designated, together with all money that may become payable thereunder, as sole security for a loan in the sum of Seventy Eight and No/100 Dollars, receipt of which is hereby acknowledged.

Said loan shall bear interest from the date the loan is granted at the rate provided in said policy, payable annually on the anniversary date of the policy and, unless duly paid, said interest shall be added to the principal of the loan and bear interest at the same rate and on the same conditions. Payments of interest and payments on account of principal, may be made at the Home Office of the Company, 1 Madison Avenue, New York City, or at such other offices as may be designated by the Company; but only in exchange for the Company's official receipt, signed by the Secretary, and counter-

signed by a person authorized to receive such payment.

At any time when the principal of said loan, with overdue interest added thereto, shall equal the cash surrender value of said policy, then the policy shall become void and of no effect at the time and upon the conditions provided therein for such contingency. If the policy contains no provisions for avoidance when the principal with overdue interest shall equal the [52] cash surrender value, then the policy shall become null and void after one month's notice to that effect.

Any notice in connection with this loan duly addressed and mailed to the last Post Office address of the undersigned known to the Company shall be deemed to have been duly given.

Executed at \_\_\_\_\_ this \_\_\_\_\_ day of 19 \_\_\_\_\_ .

[Seal] GEORGE R. HALCOMB

P. O. Address—Box 445.

Number, Specify Street, Avenue, etc.

Town or City—Redding. State—Calif.

Witness—A. E. DARM

Address—Redding, Calif.

.....[Seal]

P. O. Address—

Number, Specify Street, Avenue, etc.

Town or City— State—

Witness—

Address—

Signatures must be in INK and each Signature duly witnessed. [53]

State of California,  
County of Sacramento.—ss.

Wm. H. Devlin: being first duly sworn, on oath deposes and says he is a member of the firm of Devlin & Devlin & Diepenbrock, attorneys for the defendant in the within entitled proceeding and that he has read the foregoing and annexed Amended Answer and knows the contents thereof, and that the same is true of his own knowledge except as to such matters as are therein stated upon his information or belief, and as to those matters that he believes it to be true. That he makes this verification for and on behalf of said Metropolitan Life Insurance Company, for the reason that said corporation and all of its officers are absent from the County of Sacramento where affiant and said firm of attorneys have their offices.

[Seal]

WM. H. DEVLIN

Subscribed and sworn to before me, this 29th day of September, 1933.

GRACE MARTINDALE

Notary Public in and for the County of Sacramento,  
State of California.

[Endorsed]: Filed Sept. 29, 1933. Walter B. Maling, Clerk. [54]

[Title of Court and Cause.]

SPECIAL VERDICT.

Was there an implied contract between the pilot Ollie A. Rose and George R. Halcomb, for the payment of fare? (Answer "Yes" or "No") YES.

N. R. TAYLOR

Foreman.

[Endorsed]: Filed Oct. 4, 1933 at 4 P. M. Walter B. Maling, Clerk, By C. W. Calbreath, Deputy. [55]

[Title of Court and Cause.]

Before Kerrigan, District Judge.

Messrs. Huston, Huston and Huston of Woodland, California, attorneys for plaintiff.

Messrs. Devlin, Devlin and Diepenbrock, of Sacramento, California, attorneys for defendant.

MEMORANDUM OPINION.

The jury in this case found upon a special verdict that there was "an implied contract between the pilot Ollie A. Rose and George R. Halcomb for the payment of fare." This was upon the occasion of Rose's taking Halcomb and his wife up in one of his airplanes for the purpose of looking for Halcomb's brother who was lost. During the flight the fatal accident occurred in which every one in the plane was killed. The case is submitted to the Court upon certain issues of law raised in the case.

The defendant wrote a policy of insurance upon the life of the deceased George Halcomb contain-



ing a provision for double indemnity in case of death resulting from violent and accidental means, "provided, \*\*\* (6) that death shall not have resulted from bodily injuries sustained while participating in aviation or aeronautics except as a fare paying passenger, \*\*\*". It is contended that under the facts of this case, no contract might legally be implied and that the jury's special verdict is contrary to law. It is further contended that such an implied contract could not make the deceased a fare paying passenger within the provision of the policy. The latter is a question of the construction of the insurance contract and one of law for the Court. [56]

It is undisputed that the pilot Rose did not have a transport pilot's license and under the regulations of the Department of Commerce (Section 46, subd. (e) of Air Commerce Regulations), which have the force of law (Section 173 of 49 U.S.C.A.), and under the law of California (1929 Cal. Stats. pp. 1874-1877) he was forbidden to take up passengers for hire. He had, however, a private pilot's license which entitled him to take up passengers as guests. The pilot was a partner in a commercial aviation business, which took up passengers for hire. All the previous dealings between the deceased and this pilot or with his concern were on a commercial basis. There is no evidence to show that the deceased knew that the pilot had no right to take up fare paying passengers, and I so find. That being true, the deceased had no knowledge

of any illegality in the contract and he innocently requested the service for which the jury has found there was an implied promise to pay.

It is true that if the fatal accident had not occurred and Halcomb had refused to pay, Rose could not have enforced the implied contract because the law forbade his making it unless he had a transport pilot's license. This is so elementary that citation of authority is not necessary. This does not mean, however, that the contract itself may not be implied and may not in certain respects be enforceable.

The contract in question is not forbidden because it is *malum in se* like a gambling contract; it is merely *malum prohibitum* for the better protection of the public using airlines commercially. The party to the latter type of contract who has no knowledge of the other parties want of capacity to make the particular contract is not shorn of all legal rights with reference thereto. In California in cases where securities are sold without a permit under the Blue Sky Law if the purchaser has acted innocently, the law does not leave the parties in status quo as it [57] does in the cases of contracts *malum in se*, but permits him to recover the consideration paid for the worthless and void securities. *Hemneon vs. Amalgamated Copper Mines Co.*, 95 Cal. App. 400; *Becker vs Stine-man*, 115 Cal. App. 740. On this basis I believe that the jury might legally find that there was an implied contract between the deceased and Rose and that the deceased was to be a fare paying

passenger,—true a contract not capable of enforcement by Rose, but one which conferred certain rights upon the innocent party thereto, and which for certain purposes had a legal existence. This view seems particularly just where, as here, the real party in interest is not even a party to the contract but whose rights depend upon its existence.

Did this implied contract make the deceased a fare paying passenger, within the provisions of the policy? Accepting as I do the jury's verdict there was an implied contract to pay a fare, to hold that it did not make the deceased a fare paying passenger would twist language beyond its plain meaning. It would involve rewriting the exception in the insurance contract to provide that the insured must be "a fare paying passenger upon an airplane operated by a duly licensed transport pilot." That would be a narrowing of the risk by interpretation contrary to the principle of law that insurance contracts are construed in case of doubt against the insurer who wrote the instrument.

This, moreover, is a practical solution of the problem. A man seeking to travel by air goes to a place where such transportation is sold. He does not feel that it is necessary to inquire if the pilot is a duly licensed transport pilot and the plane is licensed for the purpose. He is entitled to assume that the law has been complied with. *Hemneon vs Amalgamated Copper Mines Co.*, *supra*. [58]

I find that the deceased was a fare paying passenger within the meaning of that term in the

contract of insurance and the plaintiff is entitled to the double indemnity feature of the policy.

The issue of whether the tender of the primary liability was a legal tender is, in view of these findings, no longer a factor in the case. Plaintiff is entitled to judgment for \$4,000.00 with interest at 3½ percent, as provided in the policy, from the date of death of the insured less the indebtedness due from said insured to said insurance company upon the policy, together with costs of suit.

I adopt this opinion as my findings of fact and conclusions of law in this case. *Parker vs St. Sure*, 53 Fed. 2nd, 706. As to any issue not expressly covered by the verdict of the jury and this opinion, I find generally in favor of the plaintiff.

Let judgment be entered accordingly.

Dated this 20th day of October, 1933.

FRANK H. KERRIGAN

U. S. District Judge.

[Endorsed]: Filed Oct. 20, 1933. Walter B. Mal-  
ing, Clerk. [59]

---

[Title of Court and Cause.]

#### JUDGMENT.

The above entitled cause came on regularly for trial on the 3rd day of October, 1933, L. C. Smith, Esq., and Messrs. Huston, Huston & Huston appearing as attorneys for the plaintiff, and Messrs. Devlin & Devlin & Diepenbrock appearing as attorneys for the defendant; a jury of twelve persons

was duly and regularly impaneled and sworn to try said cause; evidence, oral and documentary was thereupon offered and admitted; and by stipulation of the parties, the following special verdict be submitted to the jury:

“Was there an implied contract between the pilot Ollie E. Rose and George R. Halcomb, for the payment of fare? (Answer ‘Yes’ or ‘no’).

.....  
Foreman.”

and it having been further stipulated that all other issues may be found by the Court, provided that said stipulations were agreed to be subject to and without prejudice to all objections and exceptions taken and reserved by the defendant herein: that said special verdict was returned by said jury with the finding of “Yes”, and signed by the foreman; and the Court having heretofore made and entered its findings of fact and conclusions of law as to the other issues involved in the case;

IT IS THEREFORE ORDERED, adjudged and decreed as follows:

That the plaintiff Amos Halcomb, as administrator of the estate of George R. Halcomb, also known as George Raymond Halcomb, deceased, do have and recover from the defendant, Metropolitan Life Insurance Company, a corporation, the sum of [60] Four Thousand Ninety-two and 65/100 Dollars (\$4,092.65), together with interest thereon from the date of this judgment until paid at the

rate of seven per cent (7%) per annum, and also for costs herein taxed at the sum of Seventy-six and 70/100 Dollars (\$76.70).

Entered on this 30th day of October, 1933.

WALTER B. MALING,  
Clerk,

By F. M. LAMPERT,  
Deputy Clerk. [61]

[Title of Court and Cause.]

MOTION OF DEFENDANT FOR ORDER  
GRANTING NEW TRIAL.

The above named defendant, Metropolitan Life Insurance Company, a corporation, hereby moves for an order of the above entitled Court granting it a new trial in the above entitled action, and in support thereof presents the following:

I.

That the special verdict submitted to the jury in the above entitled action on October 4, 1933, to-wit:

“Special Verdict

“Was there an implied contract between the pilot Ollie A. Rose and George R. Halcomb, for the payment of fare? (Answer “Yes” or “No”)

.....  
Foreman.”

was returned by said jury with the finding of “Yes”, and which said special verdict so made and rendered by the jury was entered in the above en-

titled Court on said 4th day of October, 1933; that a motion on behalf of the defendant for an order granting a new trial as to said special verdict submitted to said jury was duly and regularly filed herein on the 13th day of October, 1933, and noticed for hearing on the 13th day of November, 1933, at the hour of 10:00 o'clock A. M.; that a copy of said motion of the defendant for an order granting a new trial as to said special verdict is hereto attached, marked Exhibit "A", and by reference thereto made a part hereof for every purpose.

## II.

That upon the rendering of said special verdict in the foregoing paragraph referred to, the said Court retained jurisdiction of the cause for the making and entering of a judgment pursuant to said special verdict and the law, and that thereafter [62] the above entitled Court duly and regularly made its judgment in favor of said plaintiff and against the defendant in the sum of Four Thousand, ninety-two and 65/100ths Dollars (\$4,092.65), together with interest thereon from the date of said judgment until paid at the rate of seven per cent (7%) per annum, and costs, and that said judgment was duly and regularly entered on the 30th day of October, 1933.

## III.

In support of this motion, the defendant above named presents the following:

That this motion for a new trial in the above entitled action is based upon each of the following causes, each of which materially affects the sub-

stantial rights of said defendant, Metropolitan Life Insurance Company:

(a) Upon each of the grounds and causes set forth in the motion of this defendant for an order granting a new trial as to the special verdict which was filed in the above entitled Court on the 13th day of October, 1933, a copy of said motion being hereto attached and marked Exhibit "A".

(b) The insufficiency of the evidence to justify said judgment.

(c) That said judgment is against law.

(d) Errors at law occurring at trial and excepted to by defendant.

#### IV.

The following particular errors at law occurring during the trial of said cause are relied upon, and are hereby specified:

(a) Each of the errors at law specified in Paragraph II of the motion of defendant for an order granting a new trial as to the special verdict, which said motion is hereto attached, marked Exhibit "A", and by reference thereto, made a part hereof for every purpose. [63]

(b) That the above entitled Court erred in failing and refusing to grant the motion of the defendant for a nonsuit.

(c) That the above entitled Court erred in denying the motion of the defendant for a directed verdict.

#### V.

In support of this motion for an order granting said defendant, Metropolitan Life Insurance Com-



pany, a new trial, said defendant relies, and at the hearing of this motion will rely, upon the following:

(a) All pleadings and papers on file in the above entitled action.

(b) Upon the minutes of this Court.

(c) Upon the stenographic reports of all testimony adduced at the trial, and also all exhibits introduced and received in evidence.

VI.

That by hereby moving this Court for an order for a new trial after judgment made and entered in favor of the above named plaintiff and against the above named defendant, the defendant is exercising the right and privilege reserved in its said motion for an order for a new trial as to said special verdict heretofore rendered and entered, and this defendant does hereby consolidate with and incorporate in this motion said motion of the defendant for an order granting a new trial as to said special verdict, with the same force and effect as though said motion, which is hereto attached and marked Exhibit "A", were fully set forth herein.

Dated, November 7, 1933.

METROPOLITAN LIFE  
INSURANCE COMPANY,  
By DEVLIN & DEVLIN  
& DIEPENBROCK  
Its Attorneys,

Defendant.

DEVLIN & DEVLIN & DIEPENBROCK

Attorneys for Defendant. [64]

## EXHIBIT "A".

Comes now the above named defendant, Metropolitan Life Insurance Company, and moves the above entitled Court for an order granting a new trial as to the special verdict submitted to the jury in the above entitled action on October 4, 1933, to-wit:

## "Special Verdict

"Was there an implied contract between the pilot Ollie A. Rose and George R. Halcomb, for the payment of fare? (Answer "Yes" or "No") .....

.....  
Foreman."

which said special verdict was returned by said jury with the finding of "Yes", and which said special verdict so made and rendered by the jury was entered in the above entitled Court on said 4th day of October, 1933. That said Court retained jurisdiction of said cause for the making and entering of a judgment pursuant to said finding and the law; that said judgment has not been rendered and/or entered as of the date hereof.

In support of this motion, the defendant above named presents the following:

## I.

That this motion for a new trial as to the said special verdict is based upon each of the following causes, each of which materially affects the substantial rights of the said defendant, Metropolitan Life Insurance Company:

(a) Insufficiency of the evidence to justify the special verdict.

(b) That said special verdict is against law.

(c) That said special issue or verdict should not have been submitted to the jury for the reason that it involves no question of fact.

(d) That it is beyond the province of a jury to pass upon said issue so submitted as it involves a consideration of a [65] question of law, and also because it is a conclusion of mixed law and fact and not a verdict upon fact alone.

(e) That errors at law occurred at the trial and were excepted to by the defendant.

## II.

That the following particular errors at law occurring during the trial of said cause are relied upon, and are hereby specified:

(a) That the above entitled Court erred in overruling the several objections of the defendant above named to the questions propounded to the witness, Elmer Halcomb, in reference to the negotiations for the transportation of George R. Halcomb and Richard Halcomb in the aeroplane of said Ollie A. Rose, and the contract of transportation, and the transportation of said parties in said aeroplane, and also in reference to the payment of fare, all of which occurred many months prior to the aeroplane flight in question.

(b) The failure and refusal of the Court in giving the defendant's proposed instructions and/or as modified by the Court, to-wit: Defendant's Proposed Instructions Nos. 3, 4, 5, 6, and 8, and each

of them, as filed with the Clerk of the Court and presented to the Court before the instructions were given, and the failure to give each of said instructions was duly excepted to by said defendant, Metropolitan Life Insurance Company, after the reading of the instructions given by the Court and before the jury retired for the purpose of considering the cause.

(c) The giving by the Court of the plaintiff's proposed instructions and/or as modified and altered by the Court, to-wit: Plaintiff's Proposed Instructions Nos. 3, 4, 6, 9, and 10, and each of them, as filed with the Clerk of the Court and presented to the Court before the instructions were given, and the giving of each of said instructions was duly excepted to by said defendant, Metropolitan Life Insurance Company, after the reading of [66] the instructions given by the Court and before the jury retired for the purpose of considering the cause.

### III.

That after the submission to said jury of said special verdict and the return and the making of said special verdict by said jury, the trial of said above entitled cause continued before the above entitled Court on a question of law as to whether or not judgment should be entered in favor of either of the respective parties, which said question of law was duly and regularly argued by counsel for the respective parties before the above entitled Court; that said matter is now submitted to the above entitled Court for its decision and for mak-

ing and entering a judgment herein, and the decision of the above entitled Court has not as of the date hereof been rendered, and no judgment has been made or entered herein. That this motion is made for the sole purpose of protecting the rights of the defendant, Metropolitan Life Insurance Company, in the event that judgment is hereafter made and entered in favor of the above named plaintiff and against the above named defendant, to move this Court for an order for a new trial upon the errors above specified in the submission to said jury of such special verdict and in said jury's making and rendering its said special verdict.

In the event that the judgment of the above entitled Court in the above entitled matter shall be made in favor of the defendant, Metropolitan Life Insurance Company, the said defendant hereby reserves the right and privilege of withdrawing this motion without any prejudice whatsoever to all rights of said defendant in and to said judgment. That this motion is also made without prejudice to the right and privilege of this defendant, Metropolitan Life Insurance Company, of moving this Court for an order for a new trial after judgment is made and entered in favor of the above named plaintiff and against the above named defendant, if such be made and entered, and which said motion may be based [67] upon the grounds that may be set forth in a written motion prepared and filed by the above named defendant in the event a judgment shall be entered against said defendant, Metropolitan Life Insurance Company, and also to take

such other steps and proceedings to protect the right and privilege of said defendant to move this Court for an order for a new trial, or to protect an appeal to the Circuit Court of Appeals for the Ninth Circuit from any such judgment as may be made and entered and said special verdict of the jury, upon any and all grounds that said defendant may desire to set forth in a bill of exceptions duly presented and filed with the above entitled Court.

#### IV.

In support of this motion for an order granting said defendant, Metropolitan Life Insurance Company, a new trial, said defendant relies, and at the hearing of this motion will rely, upon the following papers:

(a) All pleadings and papers on file in the above entitled action.

(b) Upon the minutes of this Court.

(c) Stenographic report of all testimony ad-  
duced at the trial, and also exhibits introduced and  
received in evidence.

Dated, October 13, 1933.

METROPOLITAN LIFE  
INSURANCE COMPANY,  
By DEVLIN & DEVLIN  
& DIEPENBROCK,  
Its Attorneys,

Defendant.

DEVLIN & DEVLIN & DIEPENBROCK

Attorneys for Defendant.

[Endorsed]: Filed Nov. 7, 1933. Walter B. Mal-  
ling, Clerk. [68]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Monday the 16th day of April, in the year of our Lord one thousand nine hundred and thirty-four.

PRESENT: The Honorable FRANK H. KERRIGAN, District Judge.

NO. 1034-S

AMOS HALCOMB, ETC.

vs.

METROPOLITAN LIFE  
INSURANCE CO.

The Defendant's motion for new trial having been heretofore submitted to the Court, now after due deliberation had thereon, Ordered that the motion for new trial be denied. [69]

---

[Title of Court and Cause.]

PETITION FOR APPEAL.

TO THE HONORABLE FRANK H. KERRIGAN, Judge of the United States District Court, in and for the Northern District of California, Northern Division:

Now comes Metropolitan Life Insurance Company, a corporation, defendant, by Messrs. Devlin

& Devlin & Diepenbrock, its attorneys, and respectfully shows:

That on the 4th day of October, 1933, a jury duly impaneled found a special verdict, and upon said special verdict a judgment was therein entered whereby it was adjudged that the plaintiff recover of and from the defendant Four Thousand Ninety-two and 65/100ths Dollars (\$4,092.65), together with interest thereon from the date of said judgment until paid at the rate of seven per cent (7%) per annum, and also for costs therein taxed in the sum of Seventy-six and 70/100ths Dollars (\$76.70), and motion for new trial was denied on the 16th day of April, 1934.

Your petitioner feeling itself aggrieved by the special verdict of the jury and the judgment rendered thereon, as aforesaid, hereby petitions the above entitled Court for an order allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided, for the reasons specified in the assignment of errors filed herewith.

Wherefore, your petitioner prays that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit be allowed and that an order be made fixing the amount of security which the defendant shall furnish upon such appeal, and upon [70] giving such security all further proceedings of this Court be suspended and stayed until the determination of said Appeal by the United



States Circuit Court of Appeals for the Ninth Circuit.

And your petitioner will ever pray.

Dated, June 4, 1934.

METROPOLITAN LIFE  
INSURANCE COMPANY,  
a corporation,

By WM. H. DEVLIN

Its Attorneys.

DEVLIN & DEVLIN & DIEPENBROCK  
and HORACE B. WULFF,  
Attorneys for Defendant.

[Endorsed]: Filed June 6, 1934. Walter B. Mal-  
ing, Clerk. [71]

---

[Title of Court and Cause.]

#### ASSIGNMENT OF ERRORS.

Now comes the defendant, Metropolitan Life Insurance Company, a corporation, and files the following assignment of errors which it avers occurred upon the trial of the cause, and upon which it will rely upon its prosecution of the appeal in the above entitled cause:

#### I.

That the Court erred in refusing to charge the jury as requested by said defendant in its proposed instruction No. 1, which is as follows, to-wit:

“You are hereby directed to render your verdict in favor of the plaintiff, Amos Halcomb, as Administrator of the Estate of George R.

Halcomb, also known as George Raymond Halcomb, deceased, and against the defendant, Metropolitan Life Insurance Company, a corporation, in the sum of Nineteen Hundred Twenty-nine and 20/100ths Dollars (\$1,929.20), and no more."

## II.

That the Court erred in refusing to charge the jury as requested by said defendant in its proposed instruction No. 4, which is as follows, to-wit:

"You are instructed that in the event you find that no fare was paid or agreed to be paid by said George R. Halcomb to Ollie A. Rose, the pilot and owner of the aeroplane in question, in consideration of the said transportation of said George R. Halcomb in said aeroplane, then and in that event, I direct you that the plaintiff is not entitled to recover under and pursuant to the double indemnity clause set forth in said policy of life [72] insurance and that you must return your verdict in favor of the plaintiff and against the defendant in the sum of Nineteen Hundred Twenty-nine and 20/100ths Dollars (\$1,929.20), and no more."

## III.

That the Court erred in refusing to charge the jury as requested by said defendant in its proposed instruction No. 6, which is as follows, to-wit:

"The Court instructs the jury that, as a matter of law, in this case there is no burden on

the defendant to disprove the allegations of plaintiff's complaint; that the burden of proving such allegations rests upon the party alleging the same, and in this case the burden rests upon plaintiff to establish his case and to prove all the allegations of the complaint (except those allegations admitted by the answer) by a preponderance of the evidence, and if you find that the weight of the evidence bearing on the whole case is in favor of the defendant, or that it is evenly balanced, then the plaintiff can recover a verdict at your hands in the sum of Nineteen Hundred Twenty-nine and 20/100ths dollars (\$1,929.20), and no more, which is the amount the defendant admits is due and payable to plaintiff under the terms of said policy."

#### IV.

That the Court erred in refusing to charge the jury as requested by said defendant in its proposed instruction No. 8. which is as follows, to-wit:

"You are hereby instructed that you cannot infer in this case that the decedent George R. Halcomb paid fare to Ollie A. Rose, for the aeroplane flight involved in this case, from the fact that the said Ollie A. Rose on a prior [73] occasion violated the law which prohibited him from accepting fare or compensation from any person for conveying him in his aeroplane, or, in other words, the fact that the said Rose may have accepted fare or compensation on another occasion, which he had no legal right to do,

will not justify any inference that he collected fare or compensation from the said George R. Halcomb for the flight in question. To the contrary, I hereby instruct you that in the event you find that there is an absence of evidence as to whether a fare was charged or paid by Halcomb to Rose for said transportation in the aeroplane in question, it must be presumed by you that said Ollie A. Rose obeyed the law and did not accept compensation for the aeroplane flight on which the said George R. Halcomb was killed."

#### V.

That the Court erred in charging and instructing the jury as follows:

"The evidence in this case establishes that Ollie A. Rose, the pilot of the aeroplane in which George R. Halcomb was killed, was possessed of a private pilot's license at the time of the accident which resulted in the death of said George R. Halcomb, and that such pilot, Ollie A. Rose was prohibited by the laws of the United States of America, and the State of California from carrying persons or property for hire.

"You are instructed that the law presumes in the absence of evidence to the contrary, that a person is innocent of wrong, and that the ordinary course of business has been followed, and that the law had been obeyed. This presumption is to be considered with all the other

evidence in the case, to determine whether or not George R. Halcomb was a fare paying passenger in the wrecked aeroplane." [74]

## VI.

That the Court erred in charging and instructing the jury as follows:

"Indirect evidence is of two kinds; inferences; and presumptions. An inference is a deduction which the reasoning of the jury makes from the facts proved, without an express direction of law to that effect. A presumption is a deduction which the law expressly directs to be made upon the particular facts."

## VII.

That the Court erred in charging and instructing the jury as follows:

"Presumptive or circumstantial evidence is admissible in civil cases. In this case it is not necessary that the plaintiff produce direct evidence that the deceased was a fare paying passenger, as alleged in the complaint, but such fact may be inferred from all the circumstances in the case."

## VIII.

That the Court erred in charging and instructing the jury as follows:

"It is for you gentlemen of the jury to say, from all the evidence in this case, whether

there was an implied contract that the deceased was to pay a fare for the use of the plane.”

## IX.

That the Court erred in overruling the following objections of the defendant to the introduction in evidence of the testimony of witness Daniel Franklin Halcomb:

“Q. And have you been at the air port at any time when Ollie Rose, the deceased, hauled your deceased brother, George Halcomb in the Trave-laire open three passenger plane?

“Mr. WULFF: Just a minute, we object,—The evidence now shows that Mr. Rose did not carry passengers for hire; they are trying to show he went up once for hire, and went up this time, but [75] now the evidence shows two inferences may be drawn from one fact, and it is a familiar principle of law that when such circumstances exist, no inference can be drawn from that fact.

The COURT: Objection overruled,—Exception. You may answer the question.

A. Yes, Sir.

Mr. SMITH: Q. Will you just state the circumstances to the court and jury please, Mr. Halcomb, under which you made this observation; that is, do you remember about how long it was before the accident that you saw this?

A. I would say it was about two weeks before the time that the three generations had went up.

Q. That is the way you fix the time in your mind?

A. I believe that is it, two weeks.

Q. And you know the exact time?

A. No, I do not.

Q. Who went up with Mr. Rose?

A. My brother George Halcomb, and my younger brother Richard.

Q. Who took them up to the air port?

A. I went along with them; my brother drove the car.

Q. Your brother George Halcomb drove the car? A. Yes, Sir.

Mr. WULFF: Your Honor, may my objection run to all this line of testimony, and exception noted?

The COURT: Yes, objection overruled, and exception noted.

Mr. SMITH: Q. Did your brother George Halcomb pay to Ollie Rose any money as hire for that aeroplane transportation?

Mr. WULFF: I object to this question on the further ground the word 'hire' is merely conclusive.

Mr. SMITH: All right, I will strike that out,— Q. Did George Halcomb pay to your brother any money either before or after,—I think I have got that wrong,—Did your brother George Halcomb pay to Ollie Rose any money either before or after he went up in this aeroplane? [76]

Mr. WULFF: Same objection, if your Honor please.

The COURT: Objection overruled, and exception.

A. Yes, Sir; before he went up in the aeroplane.

Mr. SMITH: Q. A little louder, please?

A. Yes, before he went up in the aeroplane he did.

Q. Was there any conversation took place prior to paying of this money?

Mr. WULFF: Same objection.

The COURT: Objection overruled and exception. A. Yes, there were. Mr. Rose come to the car and asked my brother if he wanted to go up, so my brother asked how much it would be,—

The COURT: Interposing: Now, you had two brothers in there,—Will you just say which one?

A. George Halecomb asked how much it would cost, and Rose said he would take all of us up for three dollars.

Q. Take the three of you up? A. Two of us up.

Q. There were three in the car, but he said he would take three of us up, and he took the three of you up, did he?

A. No, Sir; there was two.

Q. There were three in the car? A. There were three in the car, and he stated he would take two up for three dollars. My younger



brother Richard had been asking George to take him up several times, so I told him to take my younger brother up, so those two and Mr. Ollie Rose got in the plane.

Mr. SMITH: Q. Did you see them take off?

A. Yes, Sir.

Q. Do you recall about how long they were in the air?

A. I would say about five minutes.

Q. Did you wait there for them to return?

A. Yes, Sir.

Q. Who got out the cockpit, if you know, when they returned?

A. Ollie Rose got out of the pilot's compartment.

Q. How old was your youngest brother that went up in the plane?

A. Seven years old. [77]

Q. Now, I understand there were three of you in the car, but only two of you went up in the plane, is that right?

A. Yes, Sir.

Q. That was yourself and your brother George Halcomb, and your brother Richard Halcomb,—I think that is all."

## X.

That the Court erred in denying the defendant's motion for nonsuit duly made and presented at the close of plaintiff's case.

## XI.

That the Court erred in submitting to the jury the special verdict, which was in the following language, to-wit:

“Was there an implied contract between the pilot Ollie A. Rose and George R. Halcomb, for the payment of fare?”

## XII.

That the Court erred in submitting to the jury any issue involved in the above entitled case in this, that all issues were withdrawn from the jury upon each of the parties to said action moving the Court for a directed verdict.

## XIII.

That the Court erred in each and every particular of its charge to the jury, in this, that the Court should have withdrawn the issue and all issues from the jury and directed a verdict for the defendant.

## XIV.

That the special verdict of the jury is against evidence in that no evidence was adduced showing that George R. Halcomb was a “fare paying passenger” in the aeroplane in which he met his death.

## XV.

That the special verdict of the jury is against evidence in that from all evidence adduced at the trial it was shown that [78] there was no contract, expressed or implied, by and between plaintiff's in-

testate, George R. Halcomb, and Ollie Rose, the pilot of the aeroplane in question, wherein and whereby said George R. Halcomb agreed to pay a fare.

XVI.

That the judgment is against law in that it is not supported by evidence in respect to Paragraphs XIV and XV hereinabove set forth, and further, the evidence shows without conflict that pilot Rose was prohibited by law from transporting passengers for hire or fare, and any contract, expressed or implied, to transport passengers for hire or fare was by the laws of the State of California and of the United States illegal.

WHEREFORE, the defendant, Metropolitan Life Insurance Company, prays that the judgment of the District Court be reversed.

Dated, June 4, 1934.

DEVLIN & DEVLIN  
& DIEPENBROCK,  
HORACE B. WULFF

Attorneys for Defendant

[Endorsed]: Filed June 6, 1934. Walter B. Mal-  
ling, Clerk. [79]

---

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

The petition of Metropolitan Life Insurance Company, a corporation, defendant, for an order allowing an appeal, based upon the assignment of

errors filed contemporaneously therewith, coming on regularly this day to be heard, and the Court being duly advised,

It is hereby Ordered that an appeal as prayed for in said petition be allowed, provided that the said defendant give a good and sufficient bond in the sum of Fifty five Hundred Dollars (\$5500.00) to the effect that said defendant shall prosecute its appeal with effect, and answer all damages and costs if it fails to make its plea good, the said bond to be approved by this Court, and that thereupon all further proceedings in this Court be suspended and stayed until the determination of said appeal in the United States Circuit Court of Appeals for the Ninth Circuit.

Dated, June 6, 1934.

HAROLD LOUDERBACK  
Judge of the United States  
District Court

[Endorsed]: Filed June 6, 1934. Walter B. Mal-  
ing, Clerk. [80]

---

[Title of Court and Cause.]

Whereas, the Defendant in the above entitled action, has appealed to the United States Circuit Court of Appeals, Ninth Circuit, from a judgment made and entered against it in said action, in the United States District Court for the Northern District of California, Northern Division, in favor of the Plaintiff in said action on the 30th day of October, 1933, for Four Thousand Ninety two and

65/100 (\$4,092.65) Dollars. and Seventy six and 70/100 (\$76.70) Dollars, costs of suit, and

Whereas, the appellant is desirous of staying the execution of said judgment so appealed from,

Now, Therefore, in consideration of the premises and of such appeal, the undersigned, National Surety Corporation, a corporation having its head office in the City of New York, duly incorporated under the laws of the State of New York for the purpose of making, guaranteeing and becoming surety on bonds and undertakings, and having complied with all the requirements of the laws of the State of California, respecting such corporations, does hereby undertake and promise on the part of the appellant and does acknowledge itself justly bound in the sum of Five Thousand Five Hundred and no/100 (\$5,500.00) Dollars; that if the said judgment appealed from, or any part thereof, be affirmed, or the appeal be dismissed, the appellant will pay the amount directed to be paid by the judgment or order, or the part of such amount as to which the same shall be affirmed, if affirmed only in part, and all damages and costs which may be awarded against the appellant upon the appeal; and that if the appellant does not make such payment within thirty (30) days after the filing of the remittitur from the United States Circuit Court of Appeals, Ninth Circuit, in the Court from which the appeal is taken, judgment may be entered in the said action on [81] motion of respondent (and without notice to the undersigned surety) in his favor against the said surety, for such amount, to-

gether with the interest that may be due thereon, and the damages and costs which may be awarded against the appellant upon the appeal.

And further it is expressly understood that the National Surety Corporation, as surety hereunder, in case of a breach of any condition of this bond, agrees that the Court in the above entitled matter may, upon notice to it of not less than ten days, proceed summarily in the action, suit, case, or proceeding, in which the same is given to ascertain the amount which said surety is bound to pay on account of such breach, and render judgment therefor against it, and award execution therefor.

In Witness Whereof, the said National Surety Corporation has caused this obligation to be signed by its duly authorized Attorney-in-fact and its corporate seal to be hereunto affixed at San Francisco, California, this 7th day of June, 1934.

NATIONAL SURETY  
CORPORATION,

(Seal)

By R. W. STEWART

Attorney in fact.

State of California,

City and County of San Francisco.—ss.

On this 7th day of June in the year one thousand nine hundred and 34, before me Emily K. McCorry a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared R. W. Stewart known to me to be the duly authorized Attorney in Fact of National Surety Corporation, and the same person whose name is subscribed to the within instrument

as the Attorney in Fact of said Corporation, and the said R. W. Stewart acknowledged to me that he subscribed the name of National Surety Corporation thereto as principal, and his own name as Attorney in Fact.

In Witness Whereof, I have hereunto set my hand and [82] affixed my official seal the day and year in this Certificate first above written.

(Seal)

EMILY K. McCORRY

Notary Public in and for the City and County of  
San Francisco, State of California

The above and foregoing bond is hereby approved.

HAROLD LOUDERBACK,

Judge.

[Endorsed]: Filed June 8, 1934. Walter B. Maling, Clerk. [83]

---

In the United States District Court, for the Northern District of California, Northern Division.

No. Law 1038-S.

AMOS HALCOMB, as Administrator of the Estate of George R. Halcomb, also known as George Raymond Halcomb, deceased,

Plaintiff.

vs.

METROPOLITAN LIFE INSURANCE COMPANY, a corporation,

Defendant.

BILL OF EXCEPTIONS.

BE IT REMEMBERED: That the trial of the above entitled cause came on regularly on the 3rd

day of October, 1933, before Honorable FRANK H. KERRIGAN, Judge presiding, and a jury, upon the complaint of plaintiff and the answer of defendant, plaintiff appearing by his attorneys, MESSRS. L. C. SMITH and ARTHUR C. HUSTON, and defendant appearing by its attorneys, MESSRS. DEVLIN & DEVLIN & DIEPENBROCK and HORACE B. WULFF, and thereupon the following proceedings were had:

The Clerk called the roll of the venire and twelve (12) veniremen were called to the jury-box and sworn on their voir dire by the Clerk. Thereupon a jury consisting of twelve (12) persons was duly impanelled, and thereupon the following proceedings were had:

TESTIMONY OF ETHEL J. ROSE,  
FOR PLAINTIFF.

Ethel J. Rose was then called and sworn as a witness on behalf of plaintiff, and testified as follows:

Direct Examination.

By L. C. Smith, Esq., of Counsel for Plaintiff. [84]

My name is Ethel J. Rose. I reside at Redding, California, and have resided at Redding for some years. I am the wife of Ollie Rose, deceased. My husband had two aeroplanes which he let out for hire, one of which was a Travelaire and the other was a Ryan; the Ryan was a J-5 Motor, and the Travelaire was a "OX6". The Ryan plane carried



(Testimony of Ethel J. Rose.)

five passengers and a pilot, which is called a six place job. The Travelaire had a seating capacity for the pilot and two passengers. It was the Travelaire which was involved in this accident. My husband had had the Travelaire for over two years and Ryan a little over a year. During the ownership of these planes my husband used them commercially. We were running a school for students, and any jobs that he could work up. During all the time that my husband owned these planes, he used them to give lessons to students, and also for making trips any place. This business was known as the "Rose Air Service", and he also advertised his said business. He had tickets prepared which he sold to prospective customers at the Air Port. The following as a sample of the tickets used.

Mr. SMITH: We ask that this be admitted.

The COURT: It will be admitted and marked Plaintiff's Exhibit No. 1.

The ticket read as follows: No. 650, date blank, and to,—Amount of dollars sign,—Number of passengers blank, name of passenger blank, then another blank space,—Sold to blank. The ticket was perforated, and the larger portion of the ticket bears the same number, 650, date purchased blank,—Rose Air Service,—blank,—Trip to blank, Passenger's signature blank, amount dollars blank, sold by blank. Then, the number 650, also corresponding number, Pilot's stub ticket, void without this. The [85] admission into evidence of the printed matter on the back of the ticket was re-

(Testimony of Ethel J. Rose.)

jected, and the jury was instructed to disregard it, all upon objection of the counsel for the defendant.

I have done some flying myself, and I have frequented the air port known as "Benton's Air Port". It was the place where my husband sheltered his planes. I have sold tickets to passengers who were carried on both of the planes. My husband in the conduct of his said business had no set route, or anything like that; the planes were just rented out in the field to go anywhere anyone wanted to go to,— we did have scheduled tours made and had reckoned up about what the mileage to those places was, and what the rate would be, what the price would be, and those were advertised; for instance, like going out to Mt. Lassen, I think they charged \$35.00, something like that; if anyone wanted to go, they could call up and find out how much it would cost, but there were no regular runs. I think they only made two trips over the mountain anyway.

In determining the rate charged for transportation, we estimated the time necessary to go between the two points and figured the charge so much an hour. It was figured, with the Ryan plane, that they couldn't make anything unless they could get at least \$30.00 an hour; it was a heavy plane that carried eighty gallons of gas, besides six passengers; it was heavy to operate, so they figured on \$30.00 an hour. I think with the Travelaire they figured about \$7.50 an hour, which is the regular rate on that. When the boys were taking it out on lessons,

(Testimony of Ethel J. Rose.)

it was \$15.00 an hour, with an instructor, and after the boys had soloed, made a solo flight, and were flying alone, then the rate was \$10.00 an hour; but I think that figure of about \$7.50 an hour would really operate [86] the plane.

My husband operated both of these planes at the Benton Air Port, at Redding, for the purpose of taking pasengers up in the air, for short flights, for given sums. For short flights from ten to twelve minutes \$1.50 per person was charged, and they always tried to get five passengers in the Ryan, so that it would be \$7.50, and they wanted to figure on four flights an hour. They also charged \$1.50 per person for the Travelaire. Although the Travelaire was lighter to get up and down, it only remained in the air from seven to ten minutes, and they could make flights oftener, although they were shorter in time. The services of these planes were offered to any person who paid.

I was up at the Air Port nearly every time there was more or less of a crowd there, and kind of circulated around among the people I knew, and asked them why they didn't go up, et cetera, and if they wouldn't enjoy a ride, and selling tickets. My husband would likewise go in and about the crowd selling tickets.

My husband had been operating an aeroplane, I would say, for over a year prior to the accident.

I didn't know George Halcomb until the day of the accident. I didn't know who he was. My hus-

(Testimony of Ethel J. Rose.)

band had flown an aeroplane from 110 to 125 hours at the time of the crash.

I recall assisting Mr. George Halcomb and Mrs. Sadie Halcomb, his wife, and an elderly lady by the name of Mrs. Flagg, and also George Halcomb's infant child into the Ryan plane a little less than a year ago, or about two months prior to the accident, which was some time during the Spring. I know that George Halcomb paid my husband for that transportation. There was some newspaper publicity about the flight as there were three generations in one [87] plane, that is, Mrs. Flagg, who went, was a great grandmother, and the baby was less than a year old. On that trip Mr. Lund drove the Ryan. I never heard of any personal dealings or any particular flight relationship between Mr. George Halcomb and my husband, except the business transactions at the Air Port.

On the day of the accident, July 7, 1932, George Halcomb came to our house to see my husband, about twenty minutes of two P.M. In the conversation, my husband asked him what time he wanted to go and Mr. Halcomb pulled out his watch and looked at it, and said: "It is twenty minutes of two." "And, I have to go home first;" then he said "How will two o'clock be?" And my husband said, "All right, I will meet you at the air port at two o'clock, that will give me time to get the motor warmed up." On that day the Ryan plane was at Long Beach. We hadn't been doing so very well at Redding and Mr. Lund had taken the plane down there

(Testimony of Ethel J. Rose.)

in the hopes of picking up some fishing parties to bring up with him, and he had the plane down there with him at the time. Mr. Lund was the pilot who was employed by my husband.

Our house is kind of on a side hill, it is two stories in the rear, and just one story in the front, and the street running along there, Trinity Street, you come down about five or six steps, and we had an apartment there. On the 7th of July, 1932, we had had a late dinner, and were sitting at the table when I heard some one coming along the lawn. There was a woodshed window out there, you can see through, and I saw somebody coming, and I went to the door and looked out, and I saw it was Mr. Halcomb; I turned to my husband and said "It was George Halcomb"—Of course we all knew of the tragedy that had overtaken his—overtaken the family—so I stepped to my right to let my husband pass out. Mr. Halcomb [88] then said, "You know my brother is lost, and I came down to see if you would take me up in the plane, I thought we might be able to see him up from the air." My husband said, "Sure, I will do anything I can, anything under God's heaven I can do to help you, I am willing to do it." My husband then said, "When do you want to go, George?" and Mr. Halcomb replied, "As soon as possible." Mr. Halcomb then took out his watch and looked at it. He said it was twenty minutes to two now, "how will two o'clock do?" My husband said, "All right, I will meet you at the Air Port at

(Testimony of Ethel J. Rose.)

two o'clock, that will give me time to get the motor warmed up." Then Mr. Halcomb turned and went back up the steps. That was the last time I saw my husband.

#### Cross-Examination.

by Horace B. Wulff, Esq., of Counsel for Defendant.

My husband had operated a plane for over a period of two years, and had 110 or 125 flying hours. He possessed a private pilot's license, which did not permit him to carry passengers; he could go anywhere that he wanted to himself, if it was his own plane, but that would not permit him carrying passengers. Mr. Lund, whom we employed, was a transport pilot. I think he claimed between 2800 and 3000 hours, something like that, to his credit. It was my husband who had the private license. The pilot we hired had the transport license.

In my direct examination in speaking about my husband taking up passengers for short hauls for \$1.50, I meant that the plane was operated by Mr. Lund. I do not know of an occasion when my husband ever piloted a plane for \$1.50 for short trips, at least not within my knowledge. I have no knowledge of my husband ever hauling or carrying any passenger in an aeroplane for a fare, [89] and he never carried passengers for hire within my knowledge.

I heard the entire conversation between Mr. Halcomb and my husband at my home on July 7th, and in that conversation there was nothing whatever

(Testimony of Ethel J. Rose.)

mentioned in reference to the price or fare to be charged, nor did Mr. Halcomb say that he would make arrangements for that later.

My husband had flown the *Travelaire* before; I have been to Oakland, Los Angeles and all around with him.

The day the Halcomb family went up in the *Ryan*, I did not know Mr. Halcomb. I asked my husband who he was. The *Ryan* was piloted that day by a licensed pilot who possessed a transport license and who had the right to pilot a plane and carry passengers for hire. At the time that the Halcomb family went up in the *Ryan*, I asked my husband who George Halcomb was, and he said: "That is George Halcomb, don't you know him, he has been up around the air port, riding around,"—"You ought to know who he is." I took it for granted that he had been around the air port a good deal when I wasn't there, and had ridden, but the only occasion I ever saw him riding was the time in the *Ryan*. On that occasion I saw him pay a fare.

On the flight in which the accident occurred, if there were any arrangements made for a fare, I don't know when they were made, as I heard the entire conversation between Mr. Halcomb and my husband and there was nothing said about it. My husband upon a lot of occasions had taken passengers in the *Travelaire* without collecting any fee, or, in other words, gratuitously. [90]

TESTIMONY OF DANIEL FRANKLIN  
HALCOMB, FOR PLAINTIFF.

Daniel Franklin Halcomb was then called and sworn as a witness on behalf of plaintiff, and testified as follows:

## Direct Examination

by L. C. Smith, Esq., of Counsel for Plaintiff.

I am seventeen years of age, and I am a brother of George Halcomb, deceased. I live in Redding and have lived there all my life. I know where the Benton Air Port is, and I have been a frequenter of that place. I know where Mr. Rose, during his lifetime, had his two aeroplanes sheltered.

“Q. And have you been at the air port at any time when Ollie Rose, the deceased, hauled your deceased brother, George Halcomb in the Trave-laire open three passenger plane?”

Mr. WULFF: Just a minute, we object,—The evidence now shows that Mr. Rose did not carry passengers for hire; they are trying to show he went up once for hire, and went up this time, but now the evidence shows two inferences may be drawn from one fact, and it is a familiar principle of law that when such circumstances exist, no inference can be drawn from that fact.

The COURT: Objection overruled,—Exception. You may answer the question.

A. Yes, Sir.

Mr. SMITH: Q. Will you just state the circumstances to the court and jury please, Mr.



(Testimony of Daniel Franklin Halcomb.)

Halcomb, under which you made this observation; that is, do you remember about how long it was before the accident that you saw this?

A. I would say it was about two weeks before the time that the three generations had went up. [91]

Q. That is the way you fix the time in your mind?

A. I believe that is it, two weeks.

Q. And you know the exact time?

A. No, I do not.

Q. Who went up with Mr. Rose?

A. My brother George Halcomb, and my younger brother Richard.

Q. Who took them up to the air port?

A. I went along with them; my brother drove the car.

Q. Your brother George Halcomb drove the car? A. Yes, Sir.

Mr. WULFF: Your Honor, may my objection run to all this line of testimony, and exception noted?

The COURT: Yes, objection overruled, and exception noted.

Mr. SMITH: Q. Did your brother George Halcomb pay to Ollie Rose any money as hire for that aeroplane transportation?

Mr. WULFF: I object to this question on the further ground the word 'hire' is merely conclusive.

(Testimony of Daniel Franklin Halcomb.)

Mr. SMITH: All right, I will strike that out.—Q. Did George Halcomb pay to your brother any money either before or after,—I think I have got that wrong,—Did your brother George Halcomb pay to Ollie Rose any money either before or after he went up in this aeroplane?

Mr. WULFF: Same objection, if your Honor please.

The COURT: Objection overruled, and exception.

A. Yes, Sir; before he went up in the aeroplane.

Mr. SMITH: Q. A little louder, please?

A. Yes, before he went up in the aeroplane he did.

Q. Was there any conversation took place prior to paying of this money?

Mr. WULFF: Same objection. [92]

The COURT: Objection overruled and exception.

A. Yes, there were. Mr. Rose come to the car and asked my brother if he wanted to go up, so my brother asked how much it would be,—

The COURT: Interposing: Now, you had two brothers in there,—Will you just say which one?

A. George Halcomb asked how much it would cost, and Rose said he would take all of us up for three dollars.

(Testimony of Daniel Franklin Halcomb.)

Q. Take the three of you up? A. Two of us up.

Q. There were three in the car, but he said he would take three of us up, and he took the three of you up, did he?

A. No, Sir; there was two.

Q. There were three in the car? A. There were three in the car, and he stated he would take two up for three dollars. My younger brother Richard had been asking George to take him up several times, so I told him to take my younger brother up, so those two and Mr. Ollie Rose got in the plane.

Mr. SMITH: Q. Did you see them take off? A. Yes, Sir.

Q. Do you recall about how long they were in the air?

A. I would say about five minutes.

Q. Did you wait there for them to return?

A. Yes, Sir.

Q. Who got out of the cockpit, if you know, when they returned? A. Ollie Rose got out of the pilot's compartment.

Q. How old was your youngest brother that went up in the plane? A. Seven years old.

Q. Now, I understand there were three of you in the car, but only two of you went up in the plane, is that right? [93]

A. Yes, Sir.

Q. That was yourself and your brother George Halcomb, and your brother Richard Halcomb,—I think that is all."

TESTIMONY OF FRANCES HALCOMB,  
FOR PLAINTIFF.

Frances Halcomb was then called and sworn as a witness on behalf of plaintiff, and testified as follows:

Direct Examination

by L. C. Smith, Esq., of Counsel for Plaintiff.

I am a sister of George Halcomb, deceased. My brother George Halcomb at the time of his death on July 7, 1932, was twenty-five years old; he would have been twenty-six in September, the 6th. His wife was twenty years of age, and she would be twenty-one in September, but I don't know the date. My brother George Halcomb and his wife lived in Redding, and there were just about fifty feet or something between our back yards. I saw my brother and his wife every day. They were both in good health, just as good as they could be.

“Q. Do you know that Mrs. Flagg, George Halcomb, your brother, and Ida May, and the baby got in the aeroplane, that day that they took a ride in the cabin plane?”

A. I took them up in my car.

Mr. WULFF: I object to that as entirely immaterial; that was the three generations going up.

The COURT: I think so, but I will overrule it just the same.

A. I drove them up there in our car.” [94]

The plaintiff then introduced in evidence the original policy of life insurance, which was admitted in evidence and marked Plaintiff's Exhibit No. 2.

The plaintiff rests.

---

The defendant then moved the Court for a nonsuit upon the grounds that it was not shown by any evidence whatsoever either offered in the case, or by such matters that the Court could take judicial knowledge that the decedent George R. Halcomb was a fare paying passenger, or within the terms of the policy which would entitle the representatives of the beneficiary to collect the insurance; and on the ground it appeared that there was no contractual right whatsoever between George R. Halcomb and the pilot, or any one else, and that consequently the provision of the policy, namely, of a fare paying passenger was not shown to exist by any evidence direct or implied, or by any deductions therefrom; and on the further grounds that the plaintiff had failed to make out a case in any degree for double indemnity. The defendant's motion for a nonsuit was denied, and exception noted.

The defendant then introduced into evidence the Air Commerce Regulations adopted by the United States of America, Department of Commerce, effective December 31, 1926, with certain sections indicated as amended and effective March 22, 1927; and to the section in effect July 1, 1927, calling particular attention to Subdivision D of Section 62,

page 28, which whole section is relative to the privileges and restrictions of licensed pilots, which are as follows:

“(a) Transport pilots may pilot any type of licensed air craft, but shall not carry persons for hire in licensed air craft other than in conventional types [95] of heavier than air craft and within the classes specified in their license. Transport pilots shall demonstrate their ability to navigate land planes, sea planes, or both in one or more of the weight, classes set forth below,—(b) Limited commercial pilots shall have all of the privileges conferred and be subject to all of the restrictions imposed upon transport pilots, except that they shall not, for hire, instruct students in the operation of air craft in flight and they shall not pilot air craft carrying persons for hire outside of the areas mentioned in their licenses. (c) Industrial pilots may pilot any type of licensed air craft not carrying persons for hire, but shall not pilot unlicensed air craft carrying either persons or property for hire; (e) Private pilots not designated as students may pilot licensed air craft, but shall not carry persons or property for hire in licensed or unlicensed air craft. Private pilots designated as students are licensed only for the purpose of piloting licensed air craft,—”

The defendant then offered in evidence a certified copy of the license which was issued to Ollie Rose

on March 7, 1931, known and designated as a private pilot's license, expiring March 15, 1932, and extended to March 15, 1933, upon which license it is provided: "This certifies that the pilot whose photograph and signature appear hereon is a private pilot of 'Air Craft of the United States'. The holder may pilot all types of licensed air craft, but may not for hire, transport persons or property, nor [96] give piloting instructions to students." Said license was admitted in evidence and marked Defendant's Exhibit No. 3.

It was thereupon stipulated in open court by and between counsel for plaintiff and defendant that the liability of the defendant to the plaintiff, under the principal or single indemnity clause of the policy, is \$1,929.20. Thereupon, the defendant introduced in evidence a loan certificate and assignment of policy, which was admitted in evidence and marked Defendant's Exhibit No. 4.

---

TESTIMONY OF C. H. DOBBINS,  
FOR DEFENDANT.

C. H. Dobbins was then called and sworn as a witness on behalf of defendant, and testified as follows:

Direct Examination

by Horace B. Wulff, Esq., of Counsel for Defendant.

In the year 1932 I was the manager of Metropolitan Life Insurance Company at Chico, California.

(Testimony of C. H. Dobbins.)

My territory embraced all of Tehama County, including Redding.

In September, 1932, I had occasion to confer with Mr. L. C. Smith, attorney for Amos Halcomb, as administrator of the estate of George R. Halcomb, and at that time I tendered to him the payment due under the single liability clause under the policy of George R. Halcomb. This tender was made in the form of a certified check of the Metropolitan Life Insurance Company. Mr. Smith made no objection to the amount set forth in said check, nor did he object to the fact that the offer was not made in currency, or other legal tender. Mr. Smith accepted the check and retained it in his possession until he found out that we wouldn't pay full indemnity, then he asked me to return the policy [97] as he intended to sue the company. Later I returned the policy to him with a copy of the death claim papers. The tender, in accordance with my records, was made on September 8, 1932.

#### Cross-examination

by L. C. Smith, Esq., of counsel for Plaintiff.

I was at Mr. Smith's office three different times. On the first visit, Mr. Smith gave me the policy with the completed death claim papers, which I retained until Mr. Smith asked that the same be returned to him, which was on September 8th, and the papers were returned to him on September 12th. Mr. Smith did not give me a receipt for the check as full pay-



(Testimony of C. H. Dobbins.)

ment for the policy, because we considered the policy as a receipt. I left the check with Mr. Smith, and at Mr. Smith's request I said I would return the policy.

It was stipulated between counsel that at the time of these conferences between Mr. Dobbins and Mr. L. C. Smith, Mr. Smith was the attorney for Amos Halcomb, as administrator of the estate of George R. Halcomb, deceased.

Questions by the Court:

The first time I called on Mr. Smith was approximately July 15th, and the death occurred on July 7th. On my first visit the papers for the death claim were not completed, and Mr. Smith was not authorized to complete the papers, but he had to see the father of the deceased George Halcomb to have the papers completed, and my call on July 15th was for the purpose of completing the claim papers. I judge I called again the middle of August, when Mr. Halcomb had been appointed administrator of the estate, the first time he was authorized to complete these papers. It may have [98] been the last of August when I called to get the completed claim papers. I called again on the 8th of September, and offered a company check in payment of the contract, which was a certified check for \$1,929.20, which was the full amount on the single indemnity provision of the policy.

The defendant offered in evidence the certified check payable to Amos Halcomb, administrator of

(Testimony of C. H. Dobbins.)

George R. Halcomb, deceased, which was admitted in evidence and marked Defendant's Exhibit No. 5.

The Court continued to question the witness.

When I called on Mr. Smith to deliver said check there was quite a long discussion between us about the double indemnity provisions of the policy. The check was left with Mr. Smith after said discussion, and he had asked me to return the policy. I did not have the policy with me at that time; it was in the head office at San Francisco. The check was left with Mr. Smith until I returned with the policy, some time in the middle of the week following, approximately September 15th, and I got the check back when I gave Mr. Smith the policy. The policy is a contract which must be surrendered to the company before payment will be made.

The plaintiff did not at first claim double indemnity. When the first payment was made out, there was nothing submitted to the company so far as evidence is concerned, of a fare paying passenger upon which they had a claim for double indemnity. There were two or three discussions had with Mr. Smith. The first discussion that I had with Mr. Smith was over who was to be the administrator of the estate so that I could complete the claim papers. I tendered the certified check to Mr. Smith and he refused to accept it, but he retained the check until I could return the [99] policy to him.

The defendant rests.

(Testimony of C. H. Dobbins.)

The plaintiff then interposed a motion for a directed verdict on behalf of the plaintiff with the reservation that if the motion was denied, then the case be permitted to go to the jury, which motion was denied by the Court, and exceptions noted. The defendant then interposed a motion for a directed verdict on behalf of the defendant with like reservation, which said motion for a directed verdict in favor of the defendant was denied, and exceptions noted.

The Court then announced that it would cause to be submitted to the jury, by way of special issue or verdict, the only question of fact in the cause, to-wit, "Was there an implied contract between the pilot Ollie A. Rose and George R. Halcomb for the payment of a fare? Yes or no."

Thereupon the case was argued by the respective counsel, and the Court proceeded to instruct the jury. Thereupon the defendant in open court, then and there requested the Court to instruct the jury as follows:

DEFENDANT'S PROPOSED INSTRUCTION NO. 1.

You are hereby directed to render your verdict in favor of the plaintiff, Amos Halcomb, as Administrator of the Estate of George R. Halcomb, also known as George Raymond Halcomb, deceased, and against the defendant, Metropolitan Life Insurance Company, a corporation, in the sum of Nineteen Hundred Twenty-nine and 20/100ths Dollars (\$1,929.20), and no more.

If the foregoing instruction is refused, the defendant, Metropolitan Life Insurance Company, hereby requests the Court to give the following alternative instructions: [100]

DEFENDANT'S PROPOSED INSTRUCTION NO. 2.

The jury is instructed that in civil cases the affirmative of the issue must be proved, and where the evidence is contradictory, the decision must be made according to the preponderance of the evidence.

C. C. P. 1835.

DEFENDANT'S PROPOSED INSTRUCTION NO. 3.

The plaintiff sets forth in his complaint that the defendant, on the 13th day of April, 1928, issued its policy of life insurance to George R. Halcomb, wherein the defendant agreed that upon receipt of due proof of death of said George R. Halcomb, and upon the surrender of said policy, it would pay to the beneficiary of said George R. Halcomb, to-wit, the Administrator of the Estate of George R. Halcomb, deceased, the sum of Two Thousand Dollars (\$2,000.00), and that said policy of insurance also provided that, upon receipt of due proof of death of said George R. Halcomb as a result of bodily injuries sustained while riding in an aeroplane as a fare paying passenger, the defendant agreed to pay, in addition to the Two Thousand Dollars (\$2,000.00)

hereinabove mentioned, an additional sum of Two Thousand Dollars (\$2,000.00). The complaint alleges that on or about the 7th day of July, 1932, said George R. Halcomb died from injuries sustained while riding in an aeroplane as a fare paying passenger, and said plaintiff, as Administrator of said decedent, seeks by his said complaint the recovery of the sum of Four Thousand Dollars (\$4,000.00). The answer of the defendant admits the execution of the policy and admits its obligation to pay to the Administrator of the Estate of said decedent, the sum of Two Thousand and Eight and 29/100ths Dollars (\$2,008.29), including accrued dividends on said policy and interest to date of the tender [101] of payment of principal indemnity, less, however, the sum of Seventy-nine and 09/100ths Dollars (\$79.09), which said sum is averred to be the principal and interest of the indebtedness due, owing and unpaid by the said insured to the defendant pursuant to the terms of said policy of insurance, or the sum of Nineteen Hundred Twenty-nine and 20/100ths Dollars (\$1,929.20), and it is denied by said answer that said decedent died as a result of bodily injuries sustained while riding in an aeroplane as a fare paying passenger, and said answer further denies all liability under and pursuant to the double liability provision of said policy.

The plaintiff and the defendant concede that the sum of Nineteen Hundred Twenty-nine and 20/100ths Dollars (\$1,929.20) is the amount owing

by defendant to plaintiff upon the single liability provisions of said policy, and therefore, by said admissions of the parties, the plaintiff, in any event, is entitled to a verdict at your hands in the sum of Nineteen Hundred Twenty-nine and 20/100ths Dollars (\$1,929.20), and you are further instructed that there is but one question or issue to be decided by you, and that is, whether or not said plaintiff is entitled to recover from the defendant the additional sum of Two Thousand Dollars (\$2,000.00) by and through the provision of said policy of life insurance wherein the defendant agreed to pay to the beneficiary of said deceased insured said additional sum, upon due proof of the death of said insured as the result, directly and independently of all other causes, of bodily injuries sustained through external, violent and accidental means while riding in an aeroplane as a fare paying passenger; that all the instructions to be given by this Court to you will be directed solely to this issue and question last above stated. [102]

DEFENDANT'S PROPOSED INSTRUCTION NO. 4.

You are instructed that in the event you find that no fare was paid or agreed to be paid by said George R. Halcomb to Ollie A. Rose, the pilot and owner of the aeroplane in question, in consideration of the said transportation of said George R. Halcomb in said aeroplane, then and in that event, I direct you that the plaintiff is not entitled to re-

cover under and pursuant to the double indemnity clause set forth in said policy of life insurance and that you must return your verdict in favor of the plaintiff and against the defendant in the sum of Nineteen Hundred Twenty-nine and 20/100ths Dollars (\$1,929.20), and no more.

DEFENDANT'S PROPOSED INSTRUCTION NO. 5.

The testimony and evidence in this case establishes that Ollie A. Rose, the pilot of the aeroplane in which George R. Halcomb was killed, was possessed of a private pilot's license at the time of the accident which resulted in the death of said George R. Halcomb, and that, as such private pilot, said Ollie A. Rose was prohibited by the law of the United States of America and the State of California from carrying persons or property for hire. You are instructed that the law presumes, in the absence of evidence to the contrary, that a person is innocent of wrong and that the ordinary course of business has been followed and that the law has been obeyed. Therefore, in the absence of evidence to the contrary, it is presumed that said Ollie A. Rose obeyed the air commerce regulations of the United States Department of Commerce and did not accept compensation for the aeroplane flight on which George R. Halcomb was killed, and therefore George R. Halcomb was not a fare paying passenger. [103]

## DEFENDANT'S PROPOSED INSTRUCTION NO. 6.

The Court instructs the jury that, as a matter of law, in this case there is no burden on the defendant to disprove the allegations of plaintiff's complaint; that the burden of proving such allegations rests upon the party alleging the same, and in this case the burden rests upon plaintiff to establish his case and to prove all the allegations of the complaint (except those allegations admitted by the answer) by a preponderance of the evidence, and if you find that the weight of the evidence bearing on the whole case is in favor of the defendant, or that it is evenly balanced, then the plaintiff can recover a verdict at your hands in the sum of Nineteen Hundred Twenty-nine and 20/100ths Dollars (\$1,929.20), and no more, which is the amount the defendant admits is due and payable to plaintiff under the terms of said policy.

## DEFENDANT'S PROPOSED INSTRUCTION NO. 7.

The plaintiff sets forth in his complaint that George R. Halcomb was a fare paying passenger in an aeroplane at the time he sustained the injuries which resulted in his death. The defendant, Metropolitan Life Insurance Company, denies that George R. Halcomb was a fare paying passenger in an aeroplane at the time he sustained the injuries which resulted in his death. The plaintiff having the affirmative of this issue, it becomes necessary for him



to prove his allegation by a preponderance of the evidence, in order to entitle him to a verdict at your hands in excess of said sum of Nineteen Hundred Twenty-nine and 20/100ths Dollars (\$1,929.20), and you will render your verdict for the plaintiff in the sum of Nineteen Hundred Twenty-nine and 20/100ths Dollars (\$1,929.20), and no more, unless from a consideration of all of the evidence bearing [104] on the matter you shall be convinced by a preponderance of the evidence that, at the time of the aeroplane accident in which said George R. Halcomb sustained the injuries which resulted in his death, said decedent was riding therein as a fare paying passenger.

DEFENDANT'S PROPOSED INSTRUCTION NO. 8.

You are hereby instructed that you cannot infer in this case that the decedent George R. Halcomb paid fare to Ollie A. Rose, for the aeroplane flight involved in this case, from the fact that the said Ollie A. Rose on a prior occasion violated the law which prohibited him from accepting fare or compensation from any person for conveying him in his aeroplane, or, in other words, the fact that the said Rose may have accepted fare or compensation on another occasion, which he had no legal right to do, will not justify any inference that he collected fare or compensation from the said George R. Halcomb for the flight in question. To the contrary, I hereby instruct you that in the event you find that

there is an absence of evidence as to whether a fare was charged or paid by Halcomb to Rose for said transportation in the aeroplane in question, it must be presumed by you that said Ollie A. Rose obeyed the law and did not accept compensation for the aeroplane flight on which the said George R. Halcomb was killed.

---

Thereupon the plaintiff in open court, then and there requested the Court to instruct the jury as follows:

#### PLAINTIFF'S INSTRUCTION NO. 1

You are instructed that when two persons perish in the same calamity, such as a wreck, a battle, or a conflagration, and it is not shown who died first, and there are no particular [105] circumstances from which it can be inferred, survivorship is presumed from the probabilities resulting from the strength, age and sex as follows:

If both be over fifteen and under sixty, and the sexes be different, the male is presumed to have survived.

#### PLAINTIFF'S INSTRUCTION NO. 2

You are instructed that the law does not require demonstration; that is, such a degree of proof as, excluding possibility of error, produces absolute certainty; because such proof is rarely possible. Moral certainty only is required, or that degree of

proof which produces conviction in an unprejudiced mind.

### PLAINTIFF'S INSTRUCTION NO. 3

Indirect evidence is that which tends to establish the fact in dispute by proving another, and which, though true, does not of itself conclusively establish that fact, but which affords an inference or presumption of its existence. For example: a witness proves an admission of the party to the fact in dispute. This proves a fact, from which the fact in dispute is inferred.

### PLAINTIFF'S INSTRUCTION NO. 4

Indirect evidence is of two kinds: Inferences; and Presumptions:

An inference is a deduction which the reason of the jury makes from the facts proved without an express direction of law to that effect.

A presumption is a deduction which the law expressly directs to be made from particular facts.

[106]

### PLAINTIFF'S INSTRUCTION NO. 5

An inference must be founded:

1. On a fact legally proved; and,
2. On such a deduction from that fact as is warranted by a consideration of the usual propensities or passions of men, the particular propensities or passions of the person whose act is in question, the course of business, or the course of nature.

## PLAINTIFF'S INSTRUCTION NO. 6

The law does not require in all cases direct evidence of a fact in dispute. The law recognizes the force of direct evidence which tends to establish such fact by proving another, which though not in itself conclusive, affords an inference or presumption of the existence of the fact in dispute.

Presumptive or circumstantial evidence is admissible in civil cases. When direct evidence cannot be produced, the minds will form their judgments on circumstances.

So, in this case it is not necessary that the plaintiff produce direct evidence that the deceased was a fare paying passenger as alleged in the complaint, but such fact may be inferred from all of the circumstances in the case.

## PLAINTIFF'S INSTRUCTION NO. 7

You are instructed that the law presumes that the ordinary course of business has been followed.

This is a disputable presumption and may be controverted on other evidence.

## PLAINTIFF'S INSTRUCTION NO. 8

You are instructed that evidence may be given as to any fact from which the facts in issue may be presumed or are logically inferable. [107]

## PLAINTIFF'S INSTRUCTION NO. 9

You are instructed as to whether there was an implied contract that the deceased was to pay fare for the use of the airplane may be inferred from the circumstances attending the transaction.

## PLAINTIFF'S INSTRUCTION NO. 10

You are instructed that where one performs services for another at the other's special instance and request and there is no agreement with respect to compensation, the law will imply an agreement to pay what the services are reasonably worth.

The making of an agreement may be inferred by proof of conduct, as well as by proof of the use of words.

## PLAINTIFF'S INSTRUCTION NO. 11

You are instructed that where one performs for another with the other's knowledge, a useful service of a character usually charged for, and the latter expresses no dissent or avails himself of the service, a promise to pay the reasonable value of the service is implied.

---

And thereupon the Court instructed the jury as follows:

INSTRUCTIONS OF THE COURT TO THE  
JURY

It now becomes the duty of the Court to instruct the jury on the law of this case, and it becomes the duty of the jury to apply the law thus given to them, to the facts before them. [108]

The jury are the sole judges of the facts—It is the duty of the jury to give uniform consideration to all the instructions herein given, to consider the whole of the evidence and not a part thereof, to-

gether, and to accept such instructions as a correct statement of the law involved.

In civil cases the affirmative of the issues must be proved; the affirmative here is upon the plaintiff, and upon the plaintiff therefore, rests the burden of proof. You are the exclusive judges of the weight and sufficiency of evidence. Evidence is satisfactory which ordinarily produces a moral certainty or conviction in an unprejudiced mind. Such evidence alone will justify a verdict. When the evidence in your judgment is so equally balanced in weight and quality, effect and value, that the scales of proof hang even, your judgment should be against the party upon whom rests the burden of proof.

You are to decide this case upon the evidence adduced, subject to the instructions of the court, and upon the evidence alone, which means in part you are not swayed by sympathy; it means you will not be warranted in using sympathy for the purpose to put a strained construction either on the facts or the law; you should not be prejudiced, of course, to any extent, and I know you will not be against the defendant because it is a corporation. All persons, including corporations, insurance corporations are entitled to exact justice. The plaintiff sets forth in his complaint that the defendant on or about the thirteenth day of April, 1928, issued its policy of life insurance to George R. Halcomb, wherein the defendant agreed that upon receipt of due proof of death of the said George R. Halcomb, and upon the surrender of said policy, it would pay to the beneficiary of George R. Halcomb, [109] the

sum of Two Thousand Dollars; and that said policy of insurance also provided that upon the receipt of due proof of death of the said George R. Halcomb as a result of bodily injuries sustained while riding in an aeroplane as a fare paying passenger, the defendant agreed to pay in addition, two thousand dollars.

The answer of the defendant admits the execution of the policy and admits its obligation to pay to the administrator of the estate of the said decedent, the sum of \$2008.29, less a certain amount with which we are not here concerned.

The plaintiff and the defendant concedes that the sum of approximately \$1929.20 is the amount owing by the defendant to the plaintiff upon the single liability provisions of said policy; therefore by said admissions of the parties, plaintiff is entitled to judgment for that amount.

You are further instructed that there is but one question or issue to be decided by you, and that is whether or not said plaintiff is entitled to recover, and that is the fact whether or not said plaintiff is entitled to recover from the defendant the additional sum of Two thousand dollars by and through the provision of said policy wherein defendant agreed to pay the beneficiary of said decedent said additional sum upon due proof of death of said decedent of said insured by accidental means while riding in an aeroplane as a fare paying passenger.

You are also instructed all instructions to be given by the court are to be directed solely to this issue in question.

The evidence in this case establishes that Ollie A. Rose, the pilot of the aeroplane in which George R. Halcomb was killed, was possessed of a private pilot's license at the time of the accident which resulted in the death of said George R. Halcomb, [110] and that such pilot, Ollie A. Rose was prohibited by the laws of the United States of America, and the State of California from carrying persons or property for hire.

You are instructed that the law presumes in the absence of evidence to the contrary, that a person is innocent of wrong, and that the ordinary course of business has been followed, and that the law has been obeyed. This presumption is to be considered with all the other evidence in the case, to determine whether or not George R. Halcomb was a far paying passenger in the wrecked aeroplane.

Indirect evidence is of two kinds; inferences; and presumptions. An inference is a deduction which the reasoning of the jury makes from the facts proved, without an express direction of law to that effect. A presumption is a deduction which the law expressly directs to be made upon the particular facts.

A contract may be made either by express agreement, or by implication. An implied contract arises when one party renders services in expectation of remuneration, and the other party knowing of such expectation, receives the benefits of the services. In such cases the law implies a promise on the part of him who receives the benefit, to pay for the same.



Presumptive or circumstantial evidence is admissible in civil cases. In this case it is not necessary that the plaintiff produce direct evidence that the deceased was a fare paying passenger, as alleged in the complaint, but such fact may be inferred from all the circumstances in the case.

The only question for you gentlemen of the jury is to decide whether or not George R. Halcomb, the deceased, was a passenger for hire on the aeroplane, the destruction of which caused his death—there is no direct evidence upon this question—[111] the evidence on this subject on which you must draw your conclusion is brief. Mrs. Rose, the pilot's wife, heard all the conversation between Halcomb and her husband with reference to the flight to go and look for Halcomb's brother who was lost. Nothing was said about pay—she said her husband had carried virtually hundreds of passengers without pay, and she never knew her husband before accepting pay for taking up passengers. In this connection you may consider also the fact that Rose was not a licensed transport pilot, although the presumption is he did not take up passengers for hire in violation of the regulations of the Department of Commerce. The evidence relied on by plaintiff is that upon one occasion the pilot had taken up the deceased and a younger brother for five minutes and had charged three dollars for it; that about two weeks after this occasion, and two and a half months before the accident, the deceased and other members of his family went up for a flight in the plane owned by the Rose Brothers and paid a fee for it; the pilot in this case

was a licensed transport pilot employed by Rose Brothers. This was known as the three generations flight. There is no evidence that the deceased knew that Rose had no right to take up passengers for hire. From these facts and circumstances you must decide whether or not there was an implied contract that the deceased would pay Rose for taking him up in the plane to search for his brother.

It is for you gentlemen of the jury to say, from all the evidence in this case, whether there was an implied contract that the deceased was to pay a fare for the use of the plane.

The parties in this action have agreed upon what we call a special verdict; therefore if you find that there was an implied contract for hire, you should answer the special verdict "Yes;" if [112] you find there was no such contract, you should answer the special verdict "No." The special verdict reads, in part: "Was there an implied contract between the pilot, Ollie A. Rose and George R. Halcomb for the payment of fare?" then the answer yes or no, then a space left for that purpose. Your first duty will be to select a foreman, and you are probably aware of the fact in the Federal Court even in civil cases the verdict of the jury must be unanimous. I have already said your first duty will be to select a foreman. Any exceptions to the instructions?

Mr. HUSTON: We have none, your Honor.

Mr. WULFF: For the record, I would like to except to the Court refusing to give the following instruction of the defendant, and I would like to

ask, of course, that the proposed instruction be filed.

The COURT: (After reading instructions to jury:) Any exceptions to the instructions?

Mr. SMITH: We have none, your Honor.

Mr. WULFF: For the purpose of the record, I would like to except to the Court refusing to give the following instructions the defendant proposed,—I would like to ask that the proposed instructions be filed.

The COURT: I think that is the usual way.

Mr. WULFF: Then the proposed instructions are filed as part of the record in this case?

The COURT: Yes.

Mr. WULFF: Defendant's Proposed Instruction No. 4.—

Mr. HUSTON: Interposing: They are not numbered.

Mr. WULFF: No. 4 on the list.

The COURT: I think, Mr. Huston, that is really covered by the last instruction I gave,—Yes, 4. [113]

Mr. WULFF: That to the instruction proposed by defendant, No. 5, as altered by the Court, by inserting the language to the effect that the presumption of innocence from all legal wrong must be considered with all the other evidence and circumstances in the case,—To that addition I enter my exception.

The COURT: I may say in passing, that is the law in the State courts, but I think it is not the law in the Federal courts; but, you have made your ob-

jection specifically in that case, and you have the benefit of the objection.

Mr. WULFF: And to defendant's proposed instruction No. 6, and defendant's proposed instruction No. 8, on the ground we have these exceptions, being that the instructions are in accordance with the law and applicable under the facts of this case. Now, I would also like to except to the instructions given by the Court, and prepared and proposed by the plaintiff; and for convenience, I will refer to the numbers of the plaintiff's proposed instructions. Instruction No. 2, proposed by the plaintiff in reference to,—No, I withdraw that, please,—My error.

The COURT: And, Instruction No. 3 was refused.

Mr. WULFF: Plaintiff's instruction No. 4 was what I had in mind; on the ground that this instruction does not apply here, the only inference to be drawn,—the only facts rather upon which inferences are drawn, are subject to two conflicting inferences.

The COURT: No. 5 was refused.

Mr. WULFF: And, plaintiff's instruction No. 6, I believe, was given in part; and defendant excepts to the part given.

The COURT: No. 7 was refused,—No. 8 was refused.

Mr. WULFF: Just to make my record here, if your Honor please, we except on the ground the instruction does not state the law, when direct evidence is introduced on a fact in dispute. [114]

The COURT: 7 and 8 were refused; 9 was given as modified.

Mr. WULFF: Yes; we would like to except at this time to plaintiff's instruction No. 9, was modified by the Court, on the general ground no implied contract is shown, and evidence is applicable in a case where an illegal contract is involved.

---

Thereupon the jury retired to consider their special verdict, and returned a special verdict as follows:

“Was there an implied contract between the pilot Ollie A. Rose and George R. Halcomb, for the payment of fare? Yes.”

which said verdict was returned on October 4, 1933.

Thereupon the case was argued upon the questions of law, to-wit: Whether or not George R. Halcomb was a fare paying passenger in the aeroplane transportation in question, and further, in view of the fact that Ollie A. Rose was prohibited by law from transporting passengers for hire or a fare, could there have been under the law an expressed or implied contract between Ollie A. Rose and George R. Halcomb for the payment of a fare. After due argument, the case was submitted to the Court for decision.

### CONCLUSION.

And now in furtherance of justice, and that right be done, defendant tenders the foregoing as its bill

of exceptions in this case to the action of the Court, and prays that the same be settled, allowed and signed by the Court.

DATED, June 30, 1934.

DEVLIN & DEVLIN & DIEPENBROCK  
HORACE B. WULFF

Attorneys for Defendant. [115]

It is hereby stipulated that the above and foregoing bill of exceptions is a correct statement of the evidence adduced at the trial and proceedings had before the Court, and that the same may be approved, allowed and settled by the trial Judge as the bill of exceptions in the above entitled matter, without further notice to any party hereto, and that when so approved may be engrossed and filed in the Clerk's office and become a part of the record for the purpose of the appeal in this cause taken by the Metropolitan Life Insurance Company, a corporation, defendant.

DATED, June 30, 1934.

ARTHUR C. HUSTON  
L. C. SMITH

Attorneys for Plaintiff.

I hereby certify that the foregoing bill of exceptions contains all the evidence, with the exception of the exhibits, all the instructions given by the Court, all the instructions proposed by the defendant, objections, rulings, exceptions and all proceedings at the trial and is full, true and correct, and is hereby settled and allowed, and the same has been

proposed, served and presented and certified within the time allowed by law.

DATED, July 18th, 1934.

FRANK H. KERRIGAN

Judge.

[Endorsed]: Filed Jul. 26, 1934. Walter B. Mal-  
ing, Clerk. [116]

---

[Title of Court and Cause.]

STIPULATION FOR TRANSMITTAL OF  
EXHIBITS.

It is hereby stipulated by and between the parties hereto that all exhibits introduced at the trial of the above entitled cause, to-wit:

1. Plaintiff's exhibit No. 1, sample form of ticket used by Rose Air Service;
2. Plaintiff's Exhibit No. 2, original policy issued by the Metropolitan Life Insurance Company to George R. Halcomb, insured;
3. Defendant's exhibit No. , the Air Commerce Regulations of the Department of Commerce, effective December 31, 1926, as amended;
4. Defendant's Exhibit No. 3, private pilot's license issued to Ollie Rose, dated March 7, 1931;
5. Defendant's Exhibit No. 4, loan certificate and assignment of policy;
6. Defendant's Exhibit No. 5, certified check in the amount of One Thousand, Nine Hundred Twenty-nine and 20/100ths Dollars (\$1,929.20);

may be transmitted by the Clerk of said United States District Court to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, in lieu of transcribing and inserting said exhibits in full in the bill of exceptions.

It is further stipulated that an order of Court ordering the transmittal of said exhibits to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit may be made pursuant hereto.

Dated, June 30th, 1934. [117]

ARTHUR C. HUSTON

L. C. SMITH

Attorneys for Plaintiff.

DEVLIN & DEVLIN & DIEPENBROCK

HORACE B. WULFF

Attorneys for Defendant.

[Endorsed]: Filed Jul. 26, 1934. Walter B. Maling, Clerk. [118]

---

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the above entitled Court:

You will please prepare a transcript of the record in the above entitled action, to be filed with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and to include the following:

1. Record on removal from the State Court to the Federal Court.
2. Notice of removal.



3. Amended answer.
4. Special verdict.
5. Memorandum opinion.
6. Judgment.
7. Motion for new trial.
8. Order denying motion for new trial.
9. Petition for appeal.
10. Assignment of Errors.
11. Order allowing appeal.
12. Bond on appeal.
13. Bill of exceptions.
14. Stipulation transmitting original exhibits.
15. Praecipe for transcript of record.

Said transcript to be prepared as required by law and the rules of the United States Supreme Court and the United States Circuit Court of Appeals for the Ninth Circuit, and thereafter to be transmitted to said Circuit Court of Appeals for the Ninth Circuit, together with the original citation on appeal.

Dated, June 6, 1934.

DEVLIN & DEVLIN & DIEPENBROCK  
HORACE B. WULFF

Attorneys for Defendant and Appellant.

[Endorsed]: Filed Jun. 6, 1934. Walter B. Maling, Clerk. [119]

Due and personal service hereof by copy admitted  
this 7th day of June, 1934.

L. C. SMITH

HUSTON, HUSTON & HUSTON by L. G.  
Attorneys for Plaintiff.

[Endorsed]: Filed Jun. 12, 1934. Walter B. Mal-  
ling, Clerk.

---

[Endorsed]: No. 7562. United States Circuit  
Court of Appeals for the Ninth Circuit. Metropoli-  
tan Life Insurance Company, a corporation, Appel-  
lant, vs. Amos Halcomb, as Administrator of the  
Estate of George R. Halcomb, also known as George  
Raymond Halcomb, deceased, Appellee. Transcript  
of Record. Upon Appeal from the District Court  
of the United States for the Northern District of  
California, Northern Division.

Filed August 3, 1934.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.